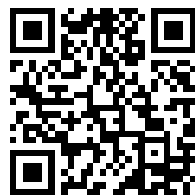

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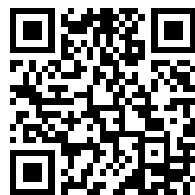
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RERUM BRITANNICARUM MEDII ÆVI
SCRIPTORES,

OR

CHRONICLES AND MEMORIALS OF GREAT BRITAIN
AND IRELAND

DURING

THE MIDDLE AGES.

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THE CHRONICLES AND MEMORIALS
OF
GREAT BRITAIN AND IRELAND
DURING THE MIDDLE AGES.

PUBLISHED BY THE AUTHORITY OF HER MAJESTY'S TREASURY, UNDER
THE DIRECTION OF THE MASTER OF THE ROLLS.

ON the 26th of January 1857, the Master of the Rolls submitted to the Treasury a proposal for the publication of materials for the History of this Country from the Invasion of the Romans to the reign of Henry VIII.

The Master of the Rolls suggested that these materials should be selected for publication under competent editors without reference to periodical or chronological arrangement, without mutilation or abridgment, preference being given, in the first instance, to such materials as were most scarce and valuable.

He proposed that each chronicle or historical document to be edited should be treated in the same way as if the editor were engaged on an *Editio Princeps*; and for this purpose the most correct text should be formed from an accurate collation of the best MSS.

To render the work more generally useful, the Master of the Rolls suggested that the editor should give an account of the MSS. employed by him, of their age and their peculiarities; that he should add to the work a brief account of the life and times of the author, and any remarks necessary to explain the chronology; but no other note or comment was to be allowed, except what might be necessary to establish the correctness of the text.

The works to be published in octavo, separately, as they were finished ; the whole responsibility of the task resting upon the editors, who were to be chosen by the Master of the Rolls with the sanction of the Treasury.

The Lords of Her Majesty's Treasury, after a careful consideration of the subject, expressed their opinion in a Treasury Minute, dated February 9, 1857, that the plan recommended by the Master of the Rolls "was well calculated for the accomplishment of this important national object, in an effectual and satisfactory manner, within a reasonable time, and provided proper attention be paid to economy, in making the detailed arrangements, without unnecessary expense."

They expressed their approbation of the proposal that each Chronicle and historical document should be edited in such a manner as to represent with all possible correctness the text of each writer, derived from a collation of the best MSS., and that no notes should be added, except such as were illustrative of the various readings. They suggested, however, that the preface to each work should contain, in addition to the particulars proposed by the Master of the Rolls, a biographical account of the author, so far as authentic materials existed for that purpose, and an estimate of his historical credibility and value.

Rolls House,
December 1857.

HENRICI DE BRACTON
DE
LEGIBUS ET CONSUETUDINIBUS
ANGLIÆ.
LIBRI QUINQUE
IN VARIOS TRACTATUS DISTINCTI.

AD DIVERSORUM ET VETUSTISSIMORUM CODICUM
COLLATIONEM TYPIS VULGATI.

EDITED

BY

SIR TRAVERS TWISS, Q.C., D.C.L.

PUBLISHED BY THE AUTHORITY OF THE LORDS COMMISSIONERS OF HER MAJESTY'S
TREASURY, UNDER THE DIRECTION OF THE MASTER OF THE ROYAL

VOL. V.



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INTRODUCTION.

INTRODUCTION.

THERE are evident signs in the later treatises of Bracton, that the text of them has been either more hastily constructed, or not so carefully revised as the text of the treatises which precede them in the order of the present work. The later treatises, however, are not on that account less interesting, on the contrary, they are in a certain sense more instructive, as they disclose more explicitly the method whereby that branch of the law of England, which is distinguished by the title of the Common Law, was being gradually defined by the judgments of the king's justiciaries in such a manner, as to supply upon almost every subject principles of recognised right for the decision of future cases. The English law was at this time well advanced in its passage through that intermediate stage between unwritten usage and written right, which may be styled recorded custom, in other words, usage approved by the deliberate judgment of righteous men, whereof an authorised record was kept, which formed a precedent of general obligation. It was especially to the task of examining these ancient judgments of righteous men that Bracton applied himself, as he states in the first chapter of his first book, and it was by reducing into order whatever he thought noteworthy in their acts, counsels, and answers, that he hoped to supply an useful *summa* for the instruction of a younger generation, who might be called upon to ascend the judgment seat, and might otherwise risk to ascend it, before they had learnt the laws which they had to administer. Such a work was the more

called for at a time when the king was carrying on the administration of justice without a justiciar or a chancellor. Stephen Segrave, who upon the disgrace of Hubert de Burgh had succeeded to the office of justiciar, had been dismissed by Henry III. in 1234, and no successor had been appointed in his place, whilst Ralph Neville, Bishop of Chichester, had vacated by death the office of chancellor in 1244, and the king, who had taken from him the seals sometime before his death, entrusted them to keepers from time to time, and made no fresh appointment of a chancellor.

The treatise, with which the present volume commences, is a treatise concerning Entry (*de Ingressu*), in other words, concerning the method of proceeding on the part of the owner of a tenement for the recovery of the seysine of it, when it is in the possession of a tenant for a term of years, whose lease has expired. The *tréatise* is in itself of considerable juridical interest, as it illustrates a development, which the jurisprudence of the *Curia Regis* had undergone since the reign of Henry II., whilst the subject matter is of no slight historical importance, as it marks a further stage in a course of political and economical progress, which the Provisions of Merton had inaugurated, and whereby the feudal organisation of the cultivators of the soil was being gradually replaced by a system of free cultivators under leases from the owners of the land. It would appear from Glanville's treatise, that in his time the courts of the king declined to take cognisance of any contract between the owner and the cultivator of the soil of the kind known to the Roman law as *locatio conductio*, and that they declined in any such case to enforce the payment of rent, or to enforce recovery where the lessee had failed to comply with the conditions of his lease. There can be little doubt that the change in the practice of the king's courts was attributable to the circumstance, that the custom was becoming general for the

owners of land to let it to free cultivators for rent, instead of granting it to feudal retainers for services, and that accordingly the king's courts found it expedient to exercise jurisdiction over leasehold contracts, which had hitherto been regarded as outside the pale of the law. The assise of novel disseysine had already, in the reign of Henry II., laid the axe to the root of feudal tenures in England, and the writ de Ingressu seems to have been originally devised by the king's justiciaries early in the reign of Henry III., as subsidiary to the writ of novel disseysine, with the view of enabling the heir of a party disseysed to recover a tenement, notwithstanding the disseysee or the disseysor had died before effect had been given to the writ of novel disseysine. The further application of the writ of entry to cases of land demised for a term seems to have originated with the same justiciaries, namely, William de Ralegh and Martin de Pateshull. Mr. Reeves, in his well-known *History of the English Law*, attributes the introduction of the writ of entry to the refinement, which had pervaded all parts of the law relating to seysine and property in the early years of the reign of Henry III. There can be no doubt that the scientific attainments of the school of jurists, who occupied the bench in the early years of the reign of Henry III., facilitated the development of English jurisprudence in a direction adverse to feudalism, but a necessity for the exercise of that refinement in the direction indicated by Mr. Reeves must have arisen either from new conditions of land-tenure having become general, or from ancient conditions of tenure, which had existed before the conquest, having been once more revived. Amongst those ancient conditions that of *loenland*, held by free cultivators, was well-known in England before the conquest, and the introduction of the writ de Ingressu, whereby the king's courts came to the aid of the owners of land demised for a term to free cultivators, was calculated to encourage the revival of an ancient system of tenure, in lieu of granting the

freehold in fee on condition of personal service. Whilst Bracton, accordingly, has not overlooked the original object of the writ of entry as subsidiary to the writ of novel disseysine, and has dedicated to the discussion of it from that limited point of view several chapters in his treatise on an assise of novel disseysine, he now proceeds to dedicate a whole treatise to the discussion of proceedings under a writ of entry, where that writ is sued out for the purpose of recovering seysine of a tenement, which is in the possession of a lessee under a demise for a term of years. The juridical necessity for a special remedy in such a case arose from the fact, that neither an assise of novel disseysine nor an assise of mortdancer would apply to such a case. An assise of novel disseysine would not be applicable to the case where the claimant had himself demised the tenement for a term, because there would not have been any tortious act on the part of the tenant in acquiring seysine of the tenement; on the other hand, an assise of mortdancer would not apply to the case where an ancestor of the claimant had so demised the tenement, inasmuch as the ancestor would not have died seised of it as of fee and in his own domain. But the king's justiciaries set a limit to an action of entry in such cases, and only allowed it, where the entry could be proved by the sight and hearing of living persons. In all other cases, where the entry had been too remote to admit of such proof, the claimant had to proceed by the ancient way of a writ of right.

To the jurists who had studied in the School of Vacarius at Oxford, or who had followed the teaching of those upon whom the mantle of Vacarius may have fallen, amongst whom Bracton has by tradition a place, the distinction between the usufructuary of land and the proprietor of land was familiar, and they would have no difficulty in distinguishing the right to the use and the fruits of land from the right to the dominion, the property, the fee, and the freehold. Thus Bracton

lays it down in his treatise *De Ingressu*, p. 5, that he who demises the use and the fruits of land for a term of years, although of very great length, provided that the entry into the land can be proved by the testimony of sight and hearing, retains for himself the dominion, the property, the fee, and the freehold, provided that he had them all previously, and if not so, a certain portion of them according to what he had previously. This passage is noteworthy, as Bracton clearly contemplates the application of a writ of entry to lands leased by a feudal lord to a free cultivator, over which the lord would retain the dominion notwithstanding the lease, whereas in the next following reign of Edward I. the right of dominion in such a case had become so unimportant, that Britton omits all allusion to it. Thus Britton says: The word "term" extends as well to a term of life as to a term of years. But he who leases for a term of years, although he makes the lease for a term of a hundred years (and here Britton follows the language of Bracton), leases the profits only, and retains for himself the fee, and the right, and the freehold, if he had them before the lease, and all that he retains he will leave at his death to his heir. Liv. V. ch. xiv., sec. 8.

The proceedings under a writ of entry, where the owner of land sought to recover possession of it at the expiration of the lessee's term, were held in ordinary course before the king's justiciaries on their iter, except in the case where the tenant set up a title to hold the land through a feoffment from a third party for his homage and service. In such a case he might sue out a writ from the Crown to the Viscount, requiring him to summon twelve knights or other loyal men of the visne, to recognise on their oaths, whether he held the land for a term of years from the claimant or his ancestor, or otherwise had been enfeoffed of it by a third party. An alternative proceeding might be had before the king's justiciaries at Westminster. In the former case, where

an inquest had been held in the full county court, the result had to be certified under the seals of the viscount and of the keepers of the pleas of the crown to the king's justiciaries at Westminster. Bracton does not define the circumstances, under which the inquest itself was to be held before the justiciaries and not in the county court, but it may be presumed from the language of the writ used in the case of an inquest in the county court, that the claimant was entitled to have the inquest held before the king's justiciaries at Westminster, whenever the viscount was connected by affinity with the tenant, or was otherwise likely to be interested in the tenant's favour. Mr. Reeves, in commenting on the alternative proceeding of summoning the jurors to appear before the justiciaries at Westminster to try what he terms a "commune placitum," observes that, "it seems very particular and not easily to be accounted for," but he appears to have overlooked the importance of the issue, which in some cases was to determine whether the tenure of the land was feudal or allodial, and not merely whether A. or B. had the better title to it.

I have used the term "viscount" here and elsewhere as the English equivalent of the Latin *vicecomes*. I am not unaware that objection may be taken to this use of the term "viscount" as the designation of the king's officer, to whom the royal writs were addressed on occasions when the county court had to be convened, and that several learned persons, for whose judgment in such matters I have a great respect, would have preferred that I should have translated the word "*vicecomes*," wherever it occurs in Bracton's work, by the English title of sheriff. I am also fain to confess that, if I had consulted my own convenience I should have adopted the term sheriff in preference to that of viscount, as of more familiar use, and so commending itself more readily to my pen; in fact, the undue preference of my pen in favour of the term "sheriff" must plead my excuse for

having inadvertently in some few passages, whilst translating the text of Bracton, deviated from the rule which I have invariably observed, as I believe, in the English rendering of the royal writs. My reasons for adopting the term "viscount" in preference to "sheriff" are partly formal and partly substantial. To deal first with the formal reasons, and by formal I mean the reasons founded on the *communis usus* of contemporary statesmen and lawyers. That visconte was the Norman equivalent of vicecomes cannot be denied, nor can it be denied that the practice of pleading in Norman French was introduced into the curia regis as early as in the reign of Henry I. From this time forward, down to the reign of Richard III. the language of lawyers was either Latin or Norman French, and vicecomes or visconte is the term invariably used to denote the chief representative officer of the Crown in general matters of justice and revenue in the several counties. Latin meanwhile maintained its place in constitutions of the king in council and in Royal Charters down to the reign of Edward I., although French had been adopted in the reign of Henry II. on the iter of the justiciaries, and as the spoken language of the courts. Further the French tongue had acquired in the reign of Henry III. an undisputed place in public Acts and was adopted in the Statutum de Scaccario, which is assigned to 51 Henry III. In the next following reign of Edward I. French became the language of the Statute Law, and visconte or viscounte is the term invariably used in the Statutes down to the fourth year of Henry VII. when English at length became the language of the Acts of Parliament. This invariable use of the term "viscount" is not peculiar to the Statute Book. It was in general use as the alternative of vicecomes in the Law Treatises and in the Year Books. Britton, for instance, and the Mirroir des Justices are instances of the use of viscounte in the text books of the reigns of Edward I. and Edward II., whilst the instances in the Year Books and the Law

Reports are too numerous to admit of citation. By a strange coincidence, as the time drew near for the substitution of the English language in place of the French as the language of Acts of Parliament, a necessity arose for discontinuing the use of the title of viscount, as the official designation of the king's representative and president of the county court. Henry VI., with what particular object in view does not clearly appear, except for the pleasure of exercising a right heretofore enjoyed by the kings of France, shortly after he had succeeded in establishing himself in the capital city of the kings of France, conferred the title of viscount as a title of personal dignity on John, Lord Beaumont, by letters patent of 18 Hen. VI. The title itself had no territorial significance in England, but it warranted the bearer to take precedence over barons. In the next following year the same king conferred the title of viscount on John, Lord Bouchier. Edward IV. followed the example of Henry VI., and created Lord de l'Isle, Viscount Berkeley, in 1480, and thus it happened that the title of viscount met with a similar fate to that which the title of earl had met with in the reign of King Stephen. It had become a term of ambiguous import, and was no longer exclusively used to designate the Crown's representative at the head of a county. It was accordingly thought expedient to devise another title for the Crown's representative in the place of viscount, and, as English was henceforth to be the language of the Statute Book, the old Anglo-Saxon title of "scirgerefa" was furbished, but instead of the softer southern and midland inflexion of shirreve being adopted, the harsher form of "shiref" as current in the north was preferred, a form which has misled many persons in the present day to suppose that the modern term "sheriff" belongs to the same family as the Arabic "shroffe" a writer.

There is an old saying, "give me the songs and the laws of a country and I will write its history." I have

quoted the laws of England in illustration of the alternative use of the terms *vicecomes* and *viscount* during four centuries. I will now invoke, as evidence on the part of the songsters of the Edwardian period, a Latin song on the venality of the king's justiciaries written in the reign of Edward I., and which is preserved in a MS. in the Harleian collection in the British Museum, No. 930, fol. 19. I shall have occasion in a future passage to allude to Sir Henry Spelman's derivation of the term *scirgerefa* from the Anglo-Saxon verb "*reafan*," to plunder, and to his justification of that root by his reference to the term "*exactor*," which is used by many contemporary Latin writers as descriptive of the functions of the *vicecomes*. The *vicecomes* of the Angevin period kept up in his character of "*exactor*" the traditional disrepute of his Norman predecessor, and thus the Edwardian songster sings of him and his brethren under their Latin title of *vicecomites*:

De vicecomitibus
 Quam duri sunt pauperibus
 Quis potest enarrare?
 Qui nihil potest dare,
 Huc et illuc trahitur,
 Et in assisis ponitur,
 Et cogitur jurare
 Non ausus murmurare.
 Quod si murmuraverit,
 Ni statim satisfecerit,
 Est totum salsum mare.

The Latin title of *vicecomes* was evidently ringing daily in the ear of this Edwardian songster, whilst a little later on in the same thirteenth century the author of the *Life of Edward the Confessor*, written in French verse, complains of king Harold, and likens him to a "*vescunte*" counting out his money at the door of the king's exchequer:

Deners cum usurer amasse
De gent rendre ne s'alasse
Cum vescunte al eschecker.
Cet per deners a cunter.

Thus much for the songs of the period. It is not, however, for the sake of formal accuracy that I have employed the term "viscount" as being in contemporaneous use with the term vicecomes during the Angevin period, for I might be open to the charge of pedantry, if merely for the sake of antiquarian precision I had used a phrase, which might not be so intelligible to English readers as the term "sheriff." There are, however, substantial grounds for not designating the vicecomes of the Angevin period by the Tudor title of sheriff. The vicecomes of the Angevin period had a sphere of duty far more comprehensive and more authoritative than that of the sheriff of the Tudor period, or than that of the high sheriff of a county in the present day; whilst to style him the shire reeve, as if he were the scirgerefa of the Anglo-Saxon period, who had passed unscathed through the fiery furnace of the Norman Conquest, would equally lead to a misconception of his functions. The vicecomes of the Angevin period was a far more important officer than the Anglian scirgerefa. The Norman idea of the vicecomes, the feudal delegate of the comes, had crept in and dominated the Anglian idea of the scirgerefa. Earls and bishops, the former representatives of the local independence of the shire, had lost their official character as administrators of the law. The king's justiciaries, representing the central authority of the Crown, had replaced them as administrators of the law in its more weighty matters, whilst the vicecomes, as the local representative of the Crown, presided alone in the county court, whence the alderman and the bishop had been successively eliminated, and where he administered the law in minor matters once a month subject to an appeal to the curia regis. Further, he had authority to convene

the bishops and the earls and barons who had baronies in his county twice a year in his shire moot or tourne, and to amerce them at his pleasure if they failed to appear. This was one of the grievances of the barons set forth in their petition at the so-called "Mad Parliament" of Oxford of 1258, and which led up to the war of the barons in 1263. If it had been absolutely necessary to select from Anglian official titles one which should approach nearest in its meaning to the Norman vicecomes, I should have considered the title of king's reeve to be more appropriate to the vicecomes in respect of the analogy of his fiscal and judicial functions than that of shire reeve, but by many of my readers, who might not be familiar with the organisation of an Anglo-Saxon shire after it became part of a kingdom, I should have been held guilty of the fault of interpreting an antiquated Latin term by a still more antiquated and far more obscure Anglian term. On the other hand, I was unwilling to make use of the title either of king's reeve or of shire reeve, as the English synonym of vicecomes, because no two legal antiquaries agree as to the proper meaning of the term reeve, or as to the etymology of its Anglo-Saxon predecessor "gerefa." Mr. John Mitchell Kemble, one of our most profound Anglo-Saxon scholars, derives gerefa from the verb "refan" or "rofan," to call aloud, and if this view be correct, the original function of the scirgerefa was to convene the freeholders of the shire in the "scirgemote," in which the ealdorman and the bishop, according to a law of king Edgar, were joint presidents. On the other hand, Sir Henry Spelman, no mean authority, holds the word "gerefa" to be equivalent to "gereafa," and to be derived from the verb "reafan," to plunder, and this view has some support in the fact that the word "scirgerefa" is frequently translated by the Latin word "exactor," and the exaction of shire-dues was a characteristic feature in the Anglo-Saxon period of a shire reeve's duties. Further, the term gerefa is a

generic term, and it is used throughout the Germanic constitutions always in connexion with judicial proceedings, so much so that Mr. J. M. Kemble maintains that wherever there was a court there was a reeve, and wherever there was a reeve there was a court.

We find, accordingly, frequent mention in the Saxon Chronicle of a reeve in relation to persons or places other than the ealdorman or the shire. There was, in the first place, the *heahgerefa* or high reeve, who seems to have been a royal officer appointed on extraordinary occasions, and for the most part of military rank, as Simeon of Durham describes him in A.D. 780 by the Latin title of "*dux*." Next in importance to this officer was the *cyninges gerefa*, the king's reeve, who is mentioned in the laws of Alfred, and also in the Saxon Chronicle under the year 787, and whom Florence of Worcester styles "*regis præpositus*." Neither of these officers are mentioned until we read of Anglo-Saxon kings. The *scirgerefa*, on the other hand, was an officer of earlier date, who seems to have existed before the office of king was known in England, when the *scir* constituted the entire state territory, so to say, of which the ealdorman was the hereditary chief, who presided in conjunction with the bishop in the *scirgemote*. The *scirgerefa* was at this time the executive officer of the *scirgemote*, elected by the voice of the freeholders of the *scir*, and he accounted to the ealdorman of the *scir* for all fines and dues levied on the freeholders. Whether he was also the legal assessor of the ealdorman and the bishop is by no means clear, and it is useless to seek in the etymology of the word the solution of this difficult problem. Phillips, in his *Englische Reichs-und-Rechts-geschichte* suggests that *gerefa* is but a transposed form of *gefera*, which means *socius*, in which case the *gefera* of a shire may be supposed to have occupied a place in relation to the ealdorman analogous to that which the comes of a province occupied in relation to the emperor or king. Other reeves of the

Anglo-Saxon period may be named, as, for instance, the burh gerefa or the reeve of a fortified town, the port gerefa or the reeve of a town protected by a fence and a ditch, into which access could only be had through a gate (porta). A wic gerefa or village reeve may be added to the catalogue, and a tungerefa or reeve of a township. Other reeves might be mentioned, amongst whom a bishop's reeve deserves notice, but of all these reeves the latest in origin, and perhaps the most important, seems to have been the king's reeve, who is mentioned twice in the laws of king Alfred as sitting with the king in the folkmote and administering justice there. Hence the question arises whether the king's reeve was a new officer and the predecessor of the Crown officer known subsequently as the king's chancellor, or whether he was a development of the scir-gerefa with this difference, that whereas the Anglo-Saxon scir-gerefa was originally elected by the freeholders of the shire, the king's reeve was nominated by the king and had to render his account to the king instead of to the ealdorman of the shire. The first step in the process of consolidating an Anglo-Saxon kingdom appears to have been to eliminate the ealdorman from the shire-mote, and the next step was to eliminate the bishop and to convert the shire reeve into a king's reeve, constituting him the sole president of the county court and of the shire motes. King Canute the Dane accomplished the first stage in this process by mediatizing the ealdorman, and by appointing a Danish yarl or earl to rule over several shires. Under this Danish innovation the king's writs were directed to the earl and to the bishop. Still there were some shires in which the ealdorman was not removed, but was allowed to die off, and meanwhile he continued to preside conjointly with the bishop over the shire-mote.

The institution of the office of earl was an important step towards the consolidation of the Danish

monarchy in England, but William the Norman saw in the great earldoms a possible danger to the supremacy of his crown, and he broke them up wherever they were aggregates of several contiguous shires. He allowed, however, the earls to preside over more counties than one, provided the counties were separate and apart from one another. William Rufus went a step further and created titular earls with a money payment known as the third penny collected from the county which gave its title to the earl, who had, however, no further official connexion with the county. Hence we find in the *Dialogus de Scaccario* written in the reign of Henry II. this definition of an earl: "Comes autem est, qui tertiam portionem eorum, quæ de placitis proveniunt, in quolibet comitatu percipit." Meanwhile the bishop had been eliminated from the county court by William the Conqueror, and the meaning of the term comes had become denaturalised, for we find in the same *Dialogus de Scaccario* this debased definition of the title, "Summa namque illa, quæ nomine firmæ requiritur a vice comite, tota non exsurgit ex fundorum redditibus, sed ex magna parte de placitis provenit, et horum tertiam partem comes percipit, *qui ideo sic dicitur, quia fisco socius est et comes in percipiendis. Porro vice-comes dicitur, quia vicem comitis suppleat in placitis illis, quibus comes ex suæ dignitatis ratione participat.*"

The vicecomes of the Angevin period would thus appear to have combined in his own person the ancient judicial functions of the ealdorman with the executive functions of the scirgerefa, for the comes or earl, although he had in theory succeeded to the presidency over the county, abandoned in practice to the vicecomes the functions formerly discharged by the ealdorman in the county court. On the other hand, the vicecomes was a nominee of the Crown, and was in fact the king's representative within the county. He farmed the king's revenues both

from the folkland, which William the Conqueror had converted into Royal demesne, and from the fees levied upon the suitors in the county court. He was not, however, necessarily resident within the county, unlike the *scirgerefa*, who resided within his shire. A favourite of the crown, for instance, might be constituted *vicecomes* of more than one county. Fulk de Breauté, a Norman follower of king John, when he was disgraced by Henry III. in 1224, was the *vicecomes* of six counties, whilst an earl or count in his turn was not disqualified from being the viscount of the county over which he was earl. Of this we have several instances in the reign of Henry III. William de Warrene, earl of Surrey, was also viscount of the county of Surrey, whilst Hubert de Burgh, earl of Kent, was also viscount of Kent. Nay more, Prince Edward, earl of Chester, afterwards king Edward I., was viscount of Bedfordshire and of Buckinghamshire in 52 Henry III. at the time when he set out for the Holy Land. In all these cases the viscount performed the duties of his office by a *subvicecomes* or *custos*.

It would be an error to suppose that the term "shire" after the conquest was identical in its meaning with the term "county." Cornwall, which was a single county, was divided even so late as the twelfth century into six shires, one of which, Triconshire, at present the hundred of Trigg, is mentioned in King Alfred's will, unless we adopt Mr. J. M. Kemble's suggestion that the Triconshire of King Alfred's time was the entire county of Cornwall. The county of York was divided into Richmondshire, Riponshire, Hallamshire, Islandshire, Norhamshire, and probably other similar districts, the names of which have passed away, for the term *scir* or shire, or as it was pronounced in East Anglia, "sheer," signified a separate unit of any organised system, and the verb "shear" is still in use in its primitive sense of cutting off or separating, as for instance, the shearing

the fleece of a sheep. Even the city of York was divided into seven shires, one of which was the archbishop's shire, and the title of sheriff is still kept up in the city of York as the title of an honorary officer of the city by the side of the mayor. In fact the term "scir" or "shire" meant little more than a separate district. There is no difficulty in understanding its use in such a sense during the period known as the Heptarchy, when the kingdom was the organised system, and the shire was a subdivision of it, but it is difficult to realise the pre-existence of the shire before a kingdom was formed, unless the shire in its earliest use meant separation in the sense of independence.

I have, accordingly, felt a reluctance to render in English the office of vicecomes during the Angevin period of the history of our legal institutions by the term sheriff, for however much the title of sheriff may have become rehabilitated in public estimation since the reign of Henry VII. by the Statutory use of it as the designation of the chief officer of the Crown within a county, inasmuch as the office of Lord Lieutenant was not introduced until the reign of Philip and Mary, it was undoubtedly in Bracton's time employed for less noble uses. Hence when English became the language of our Statute Book, as the term viscount had then come to signify a dignity without an office, and the title of "sheriff" was to be recoined, it was coupled in our Statute Book with the term "county," notwithstanding the tautology of the phrase "sheriff of a county." Further it would appear as if the vitality of the word "sheriff" had been due to its debased use in common parlance, and it failed on its revival to secure for the king's representative in the county a proper place in public estimation, so that it was found expedient to revive another Anglo-Saxon title, that of high sheriff (Heahgerefa), and to distinguish the sheriff of a county from other sheriffs by the distinctive appellation of high sheriff.

If I should be asked, then, why I have rendered the Latin title of *vicecomes*, wherever it occurs in Bracton's *Summa*, by the Norman-French title of viscount instead of the Anglo-Saxon title of sheriff, my answer is that the *vicecomes* of the Angevin monarchs differed so much from the *Scirgerefa*, that it is well to mark the difference by the use of the distinguishing term of viscount. It is a mistake, in my opinion, to contend for a *formal* continuity of Anglo-Saxon institutions. The *vicecomes* of the Angevin monarchs was a very different personage from the *scirgerefa* of the Anglo-Saxon period. Under the reign of Edgar it was the ealdorman who presided twice in the year in the shiremoot conjointly with the bishop (*Laws of Edgar II.*, § 5). This enactment is repeated nearly in identical words by King Canute in his *Secular Dooms*, G. 18. The *scirgerefa*, on the other hand, was the executive officer of the shire who carried into execution the judgments of the shiremoot in civil and criminal matters. Under the Angevin monarchs the ealdorman had disappeared from the political stage, and the bishop had abdicated his joint presidency in the county court, whilst the *vicecomes* in the name of the king presided over the freeholders of the county, both in their monthly courts and in their six-monthly *tourns*. Further, the *vicecomes* had become the chief fiscal officer of the Crown within the county, and he had the command of the *fyrd*, which in Anglo-Saxon times could only be summoned by the ealdorman. I may cite in illustration of the military authority of the *vicecomes*, the conduct of Ranulph de Glanville, who as viscount of the county of York called out the armed force of that county during the absence of King Henry II. in Normandy, in order to resist the invading army of the King of Scots, overtook King William at Alnwick, took him and his army by surprise, and captured the King himself with the chief nobles of his court, and thereby put an end to the war. It was on this occasion that Ranulph

de Glanville did such good service at the head of his knights, that he commended himself to the king's favourable notice, and so was enabled to plant his foot on the first step of the ladder, by which he subsequently ascended to the post of chief justiciar of the kingdom.

It is also worthy of remark that the office of viscount of a county had been very much reduced in importance in the interval between the reign of Henry III. and that of Henry VII., when the title of sheriff superseded it. From the date of the Inquest on the Viscounts in 1170, which Henry II. instituted in consequence of the loud complaints against their exactions, it had been the policy of the Crown to lower the dignity of the office by discontinuing the practice of appointing local magnates to it, and by replacing them by officers of the king's exchequer. Further by the assise of Northampton in 1176 the king's justiciaries were authorised to exercise a control over the viscounts, not merely in matters strictly judicial, but in their character of farmers of the Crown revenues. How searching were the enquiries of the justiciaries into the extortionate practices of the viscounts may be learned from the Articles of Enquiry set out by Bracton himself in his *Treatise de Corona* (chapter II.) to be exhibited by the justiciaries to the jurors of the assise. Similar articles were exhibited in the reign of Edward I., which will be found printed in the appendix to my second volume. Canon Stubbs has published amongst his *Select Charters* the text of the Articles of Enquiry of 1170 from a manuscript in the Bodleian Library (Rawlinson C. 641), and upon comparing them with the articles which Bracton represents to have been in use in the reign of Henry III., it seems probable that the articles drawn up in 1170, respecting which we know very little, were model articles, which it became part of the normal business of the king's justiciaries on future occasions to exhibit to the jurors of each county in the course of their iter. Edward I. commenced a reform in the manner

of appointing the viscounts, by authorising the freeholders of each county, where the office of viscount was not hereditary, to elect their viscount, but this practice was not attended with satisfactory results, and Edward II. was content with enacting that the viscount should thenceforth be a landholder within the county, but his nomination should rest with the chancellor, treasurer, and barons of the exchequer together with the justiciaries, and in the absence of the chancellor with the treasurer and barons of the exchequer together with the justiciaries. Here and there, however, the hereditary character of the office of vicecomes was maintained in certain families even after the title of sheriff had come into general use in England. The last Earl of Thanet was hereditary sheriff of Westmoreland within the memory of living persons, just as the office of vicecomes in Scotland, introduced by William the Conqueror, and noticed under that name in the Latin Statutes of the Scotch Kings and in the "Regiam Majestatem," continued to be an heritable office, even after the title of "schireff" had been substituted for that of vicecomes in the reign of James IV. (1509). But strange to say the Crown in Scotland, instead of abolishing the hereditary character of the territorial vicecomes, preferred to set up a king's sheriff by the side of him, and appointed the king's sheriff to reside in the county with a view to look after the revenues of the Crown, and to see that justice was properly administered in the local courts. It was not until the middle of the last century that by an Act of Parliament called the Heritable Jurisdiction Act (A.D. 1748), the hereditary shirewicks were abolished, and whilst the office of principal or high sheriff was annexed to the Crown, the judicial functions of the ancient vicecomes were devolved upon a nominee of the Crown under the title of the sheriff depute, paid by a salary from the Crown and holding his office *ad vitam aut ad culpam*.

The nomenclature of the English law is almost more perplexing as to its origin than the nomenclature of English State-institutions. Earl, sheriff, and county are without difficulty traced to Danish, Anglo-Saxon, and Norman sources, but Bracton in his treatise on Entry introduces us to the term "firmarius," of which we have no mention in Glanville's work, and the origin of which is a matter of irreconcilable dispute amongst antiquaries. The word firmarius is used by Bracton to signify a termor or the lessee of a tenement for a term, but we find it applied in the earliest extant Pipe Roll, long supposed to have been a relic of king Stephen's Exchequer, but now accepted as a roll of 31 Henry I., to the contract between the king and the vicecomes, who was said to "farm" the revenues of the Crown arising within the county, and had to account to the king's exchequer annually *pro firma comitatus*. Many persons are disposed to regard the word "firma" as a Low Latin translation of the Anglo-Saxon "feorme," whilst others hold that the term "ferme" is an Anglicised rendering of the Roman "firma," and that the Anglian settlers in Britain found the contract "ad firmam" already known there, and adopted it as establishing a most convenient relation between themselves and the conquered cultivators of the soil. That the system of pledging land as a security for money, which was known to the Roman law by the term "invadiation," was introduced into England by the Romans, may be gathered from Xiphilinus, the Greek translator of Dio Cassius. This author informs us that the violent seizure of the lands of the British chiefs by Seneca in the reign of the Emperor Nero, under the pretext that they had forfeited them by failing to pay off certain loans of money which he had induced them to accept on the security of their lands, was the cause of the insurrection of the Iceni under their Queen Boadicea, which for a time threatened

to be fatal to Roman supremacy in Britain. It is highly probable that many traditions of the Roman law survived the settlement of the Anglians in Britain. The contracts of borrowing and lending, of hiring and letting are institutions of natural law, which positive law may modify but cannot suppress, and when once the cultivated reason of the jurist has moulded those contracts into a form suitable to the wants of a people and custom has hallowed his work, it is as much the interest of the conquering host as of the conquered people to maintain the established practice in such matters, for its maintenance may be indispensable to secure to the conqueror the tranquil enjoyment of the fruits of his conquest.

Irrespective of these considerations the economical convenience of the consensual contract of the lease was of such universal application, and had struck such deep roots into every part of the Roman Empire before it was overrun by the Germanic tribes, that economical science forbids us to suppose that the system of leasing land for a produce rent originated in England with the followers of Hengist and of Horsa. I speak of the thing now as distinct from the name, nor do I conceive that the admission of the Roman origin of the *locutio fundi* goes to determine in any way that the Anglian "ferme," is derived from the medieval Latin "firma." That the system of the "ferme" existed in England before the Norman Conquest is historically certain, and it is equally certain that the Normans left it behind them in the Norman Duchy precisely as it is certain that they found it in existence in the province of Neustria, when Rollo and his followers first landed there. What may have been the title by which it was popularly described in the Norman tongue may be open to discussion, but we find it described in the Norman French of the most ancient collection of Norman customs under the title of "loage" and a century later under the title of "ferme."

There can be little doubt that the term "loage" represented the "locatio publica" of the Roman law, and that the Normans were content to build upon the old foundation of a civilisation earlier than their own, but how the title of "ferme" came into use and replaced that of loage may require a more careful investigation.

The word "feorme" comes of an Anglo-Saxon stock. It is represented by lexicographers to be synonymous with food or agricultural produce, and the verb "feormian" is accordingly held to signify to "supply with food or provisions." What may be the root of the word I do not pretend to say, nor do I find that the latest edition of Ducange's Glossary goes further than to derive the Latin "firma" from the Anglo-Saxon "feorme," and it quotes a passage from Henry of Huntingdon, to this effect, "*Mandavitque regi, quod ad firmam suam properans cibos salsatos sufficienter inveniret, alios secum deferre curaret.*" This passage is found in Henry of Huntingdon's *Historia Anglorum* under the year A.D. 1064, and it represents Earl Tosti, the brother of Harold, to have made an assault on a house, which his brother had fitted up at Hereford for the reception of the king, and to have slaughtered all the servants, and to have placed their mutilated limbs in dishes and vases as if served up for a banquet to receive the king, and then to have sent a message to the king to the effect that he should come to his "ferme," where he would find plenty of salt provisions, but he must bring fresh provisions with him, if he wanted them. This reference of the lexicographer is not a very happy one, as we do not know from what Anglo-Saxon Chronicle Henry of Huntingdon borrowed the Tosti legend, and it has been suggested by the late Henry Petrie, Esq., Keeper of the Records of the Tower, that he has attributed to Earl Tosti a raid made by Prince Caradoc of Wales on a well stored house at Hereford prepared by Harold for the reception of King Edward. The Saxon Chronicle is altogether silent

as to any such outrage on the part of Earl Tosti. But if we carry our researches a little further back in the Saxon Chronicle, we shall find ourselves standing on more solid ground, on which also Henry of Huntingdon has built up another part of his narrative. Under the year of our Lord 1006 the Anglo-Saxon Chronicle supplies us with two valuable illustrations of the use of this term "*feorme*." The Anglo-Saxon text of the Chronicle, with the English translation, has been printed in the valuable collection of materials for the History of Britain, which the late Sir Thomas Duffus Hardy has published under the title of *Monumenta Historica Britannica*: The first passage occurs in the course of a narrative of a Danish invasion, in which, speaking of the foreign army, the chronicler says, "When it became winter, then went the forces home; and the army then came over St. Martin's mass to their 'frith-' 'stole,' Wiht-land, and procured for themselves there from all parts that which they needed. And then at midwinter they went to their ready *feorme* out through Hampshire into Berkshire to Reading; and they did their old wont; they lighted their war-beacons as they went." And further on, "But there might the Winchester men see an army daring and fearless, as they went by their gates towards the sea and fetched themselves food and treasures over fifty miles from the sea. Then had the king gone over Thames into Shropshire and there took his *feorme* during the midwinter's tide." I am not aware of any earlier instance of the use of the word "*feorme*," and it would seem that, if the word "*feorme*" in its origin signified agricultural produce, it is in both these passages of the Saxon Chronicle used to signify a "store" of such produce, and such I am personally disposed to think was its primitive use. Now, Henry, Archdeacon of Huntingdon, uses the Saxon chronicle as the basis of his work on the history of England, the first edition

of which he published in 1135, bringing it down to the death of king Henry I. He subsequently published a second edition, which he brought down to the accession of Henry II., and which has been recently edited by Mr. Thomas Arnold of University College, Oxford, as part of the Rolls series. He describes the ravages committed by the army of Sweyn, king of the Danes, in its march through Hampshire and Berkshire to Reading, where it devoured everything that was in readiness, "quocunque autem pergebant, quæ parata erant, hilariter comedentes," and then he goes on to say, evidently following the narrative of the Saxon Chronicle, "Vidit igitur gens Wincestre exercitum hostilem, superbum et audacem, juxta portas urbis transeuntem, et cibum quem ultra L. milliaria a mari conquisiverat, et spolia quæ a bello victis acceperat, secum deferentem. Rex autem Adelred cum mæstitia et confusione erat ad *firmam suam* in Salopscire, sæpe rumorum sauciatus aculeis." It is a reasonable inference that Henry of Huntingdon employs the term "firma" in this passage as the equivalent in his opinion of the Anglo-Saxon "feorme," notwithstanding that the Latin term *firma* had in his time acquired a secondary meaning, namely, a contribution of produce instead of a store of produce. This secondary use of the word "firma" occurs first of all in the Domesday of William the Conqueror, of which the date is probably A.D. 1086, and which speaks of the "firma" of king Ethelred and of king Edward, but the same observation will apply to the use of such a term, as applies to the use of the term *vicecomes* in the reputed laws of Edward the Confessor. The compilers of the Domesday used the term "firma" in the secondary sense which it had acquired in the Norman period, namely, as the money consideration from the county or the town in lieu of a contribution of produce for the king's use. This commutation money had come to be termed "Firma Alba" being payable in silver. But neither the

Domesday nor any Anglo-Saxon law speaks of the *firma* of a shire except in connection with a king, and it is not too bold a conjecture to assume that the origin of the "feorme" or store of produce in each shire was traceable to the fact, that the king found it necessary to have stores of produce collected in certain localities for the support of himself and his court, when he made a progress. Such is also the probable explanation of the manorial parishes of the archbishops and the bishops, which formed suitable halting places for them in making their visitations. The "feorme" of the king in each county was accordingly in the first instance a store of produce collected for the use of the king when he came into the county; or transmitted to him elsewhere in kind for the support of himself and his court. In the next stage it was the annual rent or commutation money paid to the king by the *vicecomes*, and called the "ferm" of the county, for which the viscount had to account to the king's exchequer in Westminster, and in respect of which the *vicecomes* was the *firmarius* of the king's dues. He was not, however, a volunteer like the *publicanus* of the Roman system, nor was he a *conductor* of the king's revenues; but the Norman lawyers at once perceived the analogy between the Anglo-Saxon *ferm*, and the *locatio publica* of the Roman law, and they saw no good reason for disturbing the system which had been instituted by the Anglo-Saxon kings. But although the "locatio publica" was at once recognised by the Norman kings, and the "firma" of the county constituted an important branch of the revenues of the Crown, no mention of the recognition of "locationes privatae" by the Curia Regis occurs before the time of Bracton. They were regarded as outside the strict pale of the feudal system, and it would seem that in the reign of Henry II. any account between a *fermor* of land and the owner of the land, to whom the *fermor* did not owe homage, had to be tried in the

manor court, and according to Glanville no appeal lay to the king's court. Thus Glanville in the concluding chapter of his tenth book after discussing the contract of *locatio conductio*, says:—

“Predictos vero contractus, qui ex privatorum consensu fiunt, breviter transigimus, quia, ut predictum est, privatas conventiones non solet curia domini regis tueri, et quidem de talibus contractibus, qui quasi private quedam conventiones censi possunt, se non intromittit curia domini regis, L. X. c. 18.”

If the above view of the relations between the Anglo-Saxon word “feorme” and the Latin word “firma” be correct, and the contract “ad firmam” was a contract to pay so much produce annually for the use of the soil or an equivalent in money, then we must suppose that the relation of a *firmarius* to the owner of the soil was either a graft upon the feudal institutions of the Norman land system, or had continued to exist by the side of them. There can be little doubt that a considerable quantity of land forming the endowment of churches and of religious houses was allowed by the Conqueror to be leased out to cultivators of the soil upon condition of their supplying to the church or to the religious house a certain proportion of the produce of the soil. So long as the church or the religious house fulfilled its feudal obligation of furnishing one or more knights with their followers to recruit the forces of the royal army, the king was not solicitous to interfere in its private conventions with the cultivators of its lands, and the king's courts were content to ignore any disputes founded on such conventions. Such seems to have been the condition of things even in the latter years of the reign of Henry II. when Glanville's work was composed.

To what circumstance may we attribute the change in the practice of the curia regis, which Bracton expounds at considerable length? Is it to be attributed

to the infiltration of Roman notions unto the feudal system of land tenure in England, or is the "feorme" a contract as old as the notion of private property in land, and was it in this case an Anglo-Saxon form of tenure, which was again coming into general use during the Angevin period, and was gradually superseding the system of the feud? In the Eastern Empire a great change had taken place in the system of land tenure in the reign of the Emperor Zeno (474-491) by the introduction of the contract of emphyteusis, with the economical object of encouraging the clearing of land and its cultivation, in order to meet the growing demands for agricultural produce on the part of an increasing population. There are some persons who regard the feudal system of land tenure as a barbaric adaptation of the contract of emphyteusis, and hold the term "feud" to be nothing more than a corrupt abbreviation of emphyteusis, a contract which the Franks found ready at hand, when they overran Gaul, and which they made the basis of their military system. The contract, however, of emphyteusis was unknown to the Theodosian code, which was alone received in England before the Anglo-Saxon invasion, whilst the contract of *locatio conductio* was well known to that code, and the system of *locationes privatae* was recognised by the Roman tribunals long before the Romans evacuated Britain. There is no difficulty therefore in regarding the system of leasing land for a term in England as a Roman institution, precisely as the invadiation of land was introduced into England by the Roman usurers, who followed in the train of the Roman proconsuls, and it inherits from the Roman law in the present day its appellation of "mortgage," the Norman equivalent of the Latin "*mortuum vadium*."

Another explanation of the importance, which the "*locatio privata*" of land had acquired in Bracton's time as contrasted with that of Glanville, may be sought in

the vast expansion which the specific jurisprudence of contract had acquired under the teaching of the law school of Bologna. Glanville treats the debt "*ex causa locati et conducti*" as founded on a private convention, which the king's court did not recognise as the ground of an action at law, whereas in Bracton's time the convention had been elevated into a contract, which could be the foundation either of an *actio locati* or an *actio conducti* in the Curia Regis. Feudalism was no doubt founded on the early Roman conception of a contract, but it was essentially unsocial towards the later offspring of the same parent, and it acknowledged no kinship with them. The result was that as the law of contract became developed and new facts or conventions came to be enforced in the more advanced stages of Roman jurisprudence, there grew up a family of legal contracts outside the feudal pale and cast in another mould than that of personal service. The Statute of Merton passed in the 18th year of King Henry III. gave a great impulse to the application of the contract of "*locatio conductio*" to land, inasmuch as it empowered the owners of the soil to convert into arable land extensive districts, over which their feudal tenants had heretofore enjoyed a common right of pasture, and on that ground had barred for a long time the insertion of the ploughshare into any part of them. It is probable that the king's justiciaries, one of whom, William de Raleigh, had drawn up the Statute of Merton, thought it inconsistent with the due administration of justice to leave the settlement of disputes arising out of the new forms of contract solely to the jurisdiction of the manorial courts.

The term "mortgage" has been already alluded to as a Norman equivalent of the Latin term "*mortuum vadium*." This is a remarkable instance of the caprice of English legal nomenclature, for this barbarous term "mortgage" has not merely survived to our time, but

having passed into the chrysalis state it has acquired the butterfly form, and would fail to be recognised by the jurists of Glanville's time, who probably under the influence of the new teaching of the Canonists had come to regard the contract of "*mortuum vadium*" as usurious, and had agreed to stamp it out. The term "*mortuum vadium*," however, seems to have had a special vitality, and the mortgage of the present day is treated with all becoming consideration in the highest courts of the Crown.

The custom of pledging lands, which the Anglo-Saxon invaders brought with them into Britain, was no novelty to the earlier inhabitants of the island. There can be no doubt that the older Roman law permitted the owner of land to pledge it with the stipulation, that the creditor should retain the property in satisfaction of the debt, if the debt should not be paid in accordance with the conditions of the loan. I have already alluded to a passage in Xiphilinus, from which it would appear that the usurers in the train of the Roman proconsuls made the British chiefs familiar with this stipulation in the reign of Nero. A century and a half later introduces to us Papinian, one of the most famous of the great jurists of the Eastern Empire, occupying the highest seat of judgment as *præfectus prætorio* at York in the reign of the Emperor Septimius Severus (195-211). By a curious coincidence a passage exists in a MS. discovered in the early part of the present century by Angelo Mai at Rome, and published amongst the "*Vaticana Fragmenta*" by Bethmann-Holweg in 1833, which gives us the law as laid down by Papinian :

"Creditor a debitore pignus rite emit, sive in exordio contractus ita convenit, sive postea. Nec incerti prefii venditio videbitur, si convenerit, ut pecunia fœnoris non soluta creditor jure empti dominium retineat, cum sortis et usurarum quantitas ad diem solvendæ pecuniæ præstitutam certa sit."

The pawning or pigneration of land was thus evidently common in Britain, and the enforcement of the contract by the Imperial tribunals was a matter of course before the Romans evacuated the island, and as the habit of pledging their lands was prevalent amongst the Germanic tribes, the Anglo-Saxons brought no new practice in that respect with them into Britain, neither was it a novelty to the Norman invaders as they left it behind them in Normandy. Whether the objection to the "mortuum vadium" as an usurious transaction, which prevailed in Glanville's time, had also a Roman origin is open to discussion, inasmuch as the Emperor Constantine, in pursuance of his system for the abolition of usury, forbade the further application of the old Roman law of pigneration to land, and substituted a novel law of hypothec. That Constantine's legislation met with a certain acceptance in the courts of the Western Empire is not improbable, but that it influenced the practice of the courts in Britain to such an extent as to bring about the condemnation of the "mortuum vadium" as an usurious transaction is, I think, untenable, for the new law of hypothec would in that case have assuredly become established in England under the same influence, but of this latter law we do not find the slightest trace. For all these reasons it is quite intelligible that we should find the old Roman law of pigneration recognised and enforced in its application to land by the curia regis at the earliest period, when we have any certain knowledge of its procedure. Thus Glanville in discussing the contract of "mutuum" on the security of a pledge, says :

"Creditur quoque mutuo res aliqua sub vadii positione, quod cum fit, quandoque res mobiles, ut cattle, ponuntur in vadium, quandoque res immobiles, ut terræ et tenementa, et redditus sive in denariis sive in aliis rebus consistentes;" and in the next section he adds, "Item invadiatur res quandoque ad ter-

“minum, quandoque sine termino: item quandoque
 “invadiatur res in *mortuo vadio*, quandoque non.
 “*Mortuum vadium* dicitur illud, cujus fructus vel
 “redditus, interim percepti, in nullo se acquietent.”
 Lib. X. cap. vi. § 1 and 2.

Further, Glanville goes on to state that the mortgagee is bound not to allow the thing mortgaged to become deteriorated, whilst it is in his possession, and if it be land, which requires some expenses to be incurred either by feeding cattle upon it or by manuring it, such expenses must be matter of convention between the creditor and the debtor. This looks very like early Roman law arrested in its growth by the feudal system, which kept out of England the relaxations introduced by the later Imperial system, under which the courts were empowered to award such expenses as to them might seem reasonable. But whence arose the expression “mortuum vadium”? We are forbidden to refer it to an ecclesiastical source, unless indeed it was a term of recent origin in Glanville’s time, invented by the clerical judges with a view to discredit a species of pawn, which the Church condemned and which it was desirous that the curia regis should discountenance. And thus it happened that Glanville, after again laying it down that the curia regis ignored all such transactions as private conventions, proceeds to define the “mortuum vadium” more precisely.

“Cum vero res immobilis ponitur in vadium, ita
 “quod inde facta fuerit seisinā ipsi creditori et ad
 “terminum, aut ita convenit inter creditorem et debi-
 “torem, quod exitus et redditus interim se acquie-
 “tent, aut sic, quod in nullo se acquietent. Prima
 “conventio justa est et tenet, secunda injusta est et
 “inhonesta, que dicitur *mortuum vadium*, sed per
 “curiam domini regis non prohibetur fieri, et tamen
 “reputat eam pro specie usure. Unde si quis in tali

“ vadio decesserit et post mortem ejus hoc fuerit probatum, de rebus ejus non aliter disponetur, quam de rebus usurarii.” L. X. c. viii. § 6.

It would appear as if the discredit, into which the contract of “mortuum vadium” had thus fallen in Glanville’s time, coupled with the possible confiscation of the land to the Crown, if it was still in the mortgagee’s possession at his death, had caused it to be discontinued, and that instead of an explicit invadiation of land the practice in Bracton’s time was to substitute a conditional donation, namely a donation of land, which should cease to be operative, if the donor should pay back to the donee a certain sum of money on a given day. In like manner Britton ignores the term “mortgage” and treats of the contract under the head of conditional gifts, when he says, “if a gift is made on such a condition, that, if the donor shall pay so much on a certain day and at a certain place, the gift shall return to the donor, and if not, the land shall remain in fee with the creditor and his heirs.” L. II. ch. v. § 14. Nevertheless Bracton does not altogether discard the use of the term “pignus,” nor does Britton discard the use of the term “gage” as descriptive of land, of which a donation had been made subject to the condition, that the land should be conveyed back to the donor on his refunding the purchase money. It might have been expected that the discredit into which the term “mortuum vadium” had fallen during the Angevin period would have caused it to be expunged from the vocabulary of English law, yet strange to say the term was rehabilitated by Littleton and Coke, who must have lost sight of its origin, and under their countenance it has come back into use as a generic term for a conditional donation of land, whether the fruits of the land are to go to the mortgagor or to the mortgagee pending the refunding of the purchase money. Lord Coke must have been a master of dry

humour, if he was not ignorant of the real origin of the phrase, when he endorsed Littleton's novel exposition of the term, that it signified that the estate was *dead* for ever to the mortgagor, if he failed to fulfil the conditions under which he had pledged it.

It has been suggested by an able writer on law that the term "*vadium mortuum*" in its application to the "*pigneratio*" of land may have been borrowed from the Anglo-Saxon law of distress (*naam*). The author of the *Miroir des Justices* says:

"Deux maniers sont de Naams, naam morte sicome
"des blees, vine et autres tielx chateix, et naam vief
"sicome de home, beste et tielx vife choses."

Upon this hypothesis the term "*vadium mortuum*" would properly be applicable to every invadiation of land as being a *dead* pledge for the debt, but Glanville's explanation of the phrase is supported by the *Ancienne Coutume de Normandie*, of which an admirable edition has been very recently published by Mr. William Laurence de Gruchy, juré-justicier of the Royal Court of the island of Jersey.¹ The Latin text of this ancient "*coutume*," which was probably compiled in its present form towards the end of the thirteenth century, is to this effect, p. 273:

"Notandum insuper est, quod vadium quoddam
"vivum, quoddam mortuum nuncupatur. Mortuum
"autem dicitur vadium, quod se de nihilo redimit vel
"acquitat, ut terra tradita in vadium pro centum so-
"lidis, quam cum obligator rehabere voluerit, acceptam
"pecuniam restituit in solidum. Vivum autem dicitur
"vadium, quod ex suis proventibus acquitatur, ut
"terra tradita in vadium pro centum solidis usque ad
"tres annos, quæ, elapso anno tertio, reddenda est ob-
"ligatori; vel tradita in vadium quousque pecunia
"recepta de ejusdem proventibus fuerit persoluta."

¹ Jersey : Charles Le Fevere, St. Helier, 1881.

Backed by this authority, Glanville's explanation of the phrase "*vadium mortuum*" has very strong claims upon our acceptance as presumably correct, and, further, it may be assumed that the phrase "*vadium mortuum*" was of Roman origin, for no mention of it occurs in the earliest collection of *Etablissements et Coutumes de Normandie*, published for the first time in 1839 by M. Marnier from a manuscript now in the National Library in Paris, but formerly in the library of Sainte Geneviève.

Bracton's work, for reasons which are not known to us, has not been completed in accordance with his original design, as avowed in several places. For instance, in his treatise *De Actionibus*, f. 105. b., he promises to treat below of the plea of forbidden distresses (*placitum de vetito namii*), which he has omitted to do. We are not therefore entitled to infer from the silence of Bracton touching the pledge of land under the condition that the mortgagee was to take the fruits of the land without setting them off against the debt, that it had totally fallen into desuetude in his time; and perhaps Lord Coke, in his antipathy to the Norman element of the law of England, was interested in repudiating the ancient interpretation of the phrase, as being a Norman perversion of it. On the other hand, a more recent school of jurists have wandered further away from Glanville, and have contended that the "*mortuum vadium*" was introduced into England upon the common law principle of conditions, rather than after the Roman doctrine of the *pignus*. Why such a strained view of the origin of the contract of mortgage should have been adopted by a writer so learned as Hargrave it is not easy to divine, unless it was considered by him to furnish to the courts of the Crown a groundwork for favoring the equity of redemption as against the right of foreclosure in cases, where the conditions of redemption had been imperfectly stated in the mortgage deed. A writ of entry, according to Bracton, proceeded in such a case upon the assumption

that the tenant, against whom it had been sued out, held the land for a term which had passed, upon which writ, however, a plea might be given in by the tenant, which at once challenged the title of the claimant, and converted the proceedings into a trial of right, precisely as if they had been commenced by a writ of right.

Bracton proceeds in the next following book to treat of the plea of Right (*de Recto*), and the first treatise is extremely interesting from the light which it throws upon the process, by which a new spirit was infused into the feudal institutions by the Crown authorising the viscount to hold cognisance of pleas of right in the county court in the first instance, when the lord's court was in default, and by the Crown in cases, where there was just ground, allowing the argument to be transferred from the county court to the *curia regis*. There is a slight variation observable in the title which is prefixed to this book in Tottell's edition, as compared with the title in the table of contents. The latter coincides with the title in the Rawlinson MS., C. 160. It is possible that the title in Tottell's edition is not a part of the original work; but if that be the case, then it may be conjectured with good reason that the fifth book was originally a treatise *De Recto*, of which the respective treatises *De Essoniis*, *De Defaltis*, and *De Exceptionibus* were component parts. It would be premature to discuss this question on the present occasion, as the bulk of the fifth book will form the sixth and last volume of the present edition, and it will have sufficed for my immediate purpose to have called the reader's attention to the title of the fifth book. I may, however, notice that the treatises, to which distinguishing titles are prefixed in Tottell's edition, are continued, in MS. Rawlinson, C. 160, without any distinguishing title, as if they were constituent parts of the *Tractatus de Recto*.

It seems not improbable, that in Bracton's time the courts of the lords of the smaller manors were becoming

inefficient from an increasing reluctance on the part of the tenants of the manor to obey the summons of the bailliff to do suit at the manor court, in other words to attend and form a court. Other causes also were in operation to render the minor courts unequal to their original duties ; in some cases the lords were unwilling, in others they were unable to do full justice to the plaintiff, as it was necessary that both parties should live within the manor to found the jurisdiction of its court. It would seem, accordingly, as if the first step on the part of the Crown had been to constitute the court of the viscount a superior court to hear the complaints of parties, where the inferior court had made default. The process of change, whereby the viscount drew into his court all questions of proprietary right, was gradual. The Crown did not in the first place set aside the manorial court, where the lord was willing and able to declare the right between the parties, but only where after due notice from the serjeant of the king the inferior court continued in default. Further, we learn from Hengham Magna, ch. 3, that most lords were content to waive their jurisdiction respecting titles to land, as little profit accrued to them from holding such pleas in their courts. Whenever, therefore, the manorial court, continued in default the viscount was authorised by a writ of the Crown to assume jurisdiction over the case, but even in this stage of the proceedings the lord might appeal to the king's justiciaries to stay proceedings in the viscount's court, which in most cases they refused to do. Further, the course of proceeding in the viscount's court, when it had been set in motion by a claimant, was extremely considerate towards the tenant in giving him full time to appear and to defend his tenancy, and each viscount's court had to observe the customs of the county, which the king's justiciaries on appeal treated with the greatest respect. So far each county retained one of the characteristics of the ancient shire, namely, a formal

independence in its manner of giving effect to new principles in the administration of justice under a king's officer instead of its ancient ealdorman. It would appear that in a plea of right in the viscount's court it was competent for the claimant or the tenant to maintain his title either by wager of battle or by putting himself on a great assise, in which latter case a writ of peace might be sued out by the tenant to suspend further proceedings until the coming of the king's justiciaries. Meanwhile a writ had to be taken out by the claimant for the viscount to summon four knights, who should choose on their oath twelve of the more loyal knights of the visne to make a recognition at the next iter of the king's justiciaries, and so carefully was the *judicium parium* kept in view, that, if the tenant held in gavelkind the four knights were to be chosen from such persons as held in gavelkind, and they were to choose twelve recognisors who also held in gavelkind. It was competent, however, for either the claimant or the tenant to petition the Crown for a writ to transfer the cause from the viscount's court to the king's court. This writ was granted, at the prayer of the claimant, where the tenant belonged to a privileged order, such as the Templars or the Hospitallers, who were not bound to answer to any plea except before the king himself or his chief justiciary, or wherever the viscount was himself interested or the question of right was very difficult to determine. Further, where battle had been joined in the county court contrary to the custom of the realm the cause might be removed from the county court to the royal court on petition of either of the parties. Bracton is silent as to any penalty to be incurred by the viscount for failing to do justice to a plaintiff in the county court, but Britton lays it down that if any viscount or his deputy failed to do justice to a plaintiff, if he farmed his office, he was punishable by fine and imprisonment; but if he held his office in fee he

should lose his franchise and make satisfaction to the plaintiff in damages L. VI. ch. iv. § 8.

Two rules of practice, which have been observed in English courts until very recently, are traditions of Bracton's time. According to one the service of a summons was to be made upon the defendant at his principal domicile, where he had several domiciles in a county; according to the other, an interval of fifteen days was to be allowed to elapse between the service of a summons and the necessary appearance of the party in court; but both these rules were heirlooms of the early Roman settlers in Britain, which the Anglian immigration was glad to maintain. There were, however, in Bracton's time certain cases of exception, where a defendant might be summoned to appear within a shorter interval than that of fifteen days, as for instance in cases of vacant churches, where lapse might take place under the decree of the Council of Lateran, or in the case of merchants who could not wait for tardy justice, and to whom justice was on that account administered in courts of *pepoudrous*. But in all cases where a party was served with a summons to appear within fifteen days he was entitled to *essoins* himself, and Bracton accordingly proceeds to discuss the nature of *essoins* in the next following treatise. It may deserve notice that the last sentence of Bracton's first treatise on a writ of Right does not occur in MS. Rawlinson, C. 160, whilst it neither seems apposite to the place where it is inserted, nor is the promise of Bracton to discuss it hereafter fulfilled. Britton also, L. VI. ch. iv. § 11, seems to have been misled by the passage in Bracton, and to have inserted in his text a similar promise, which Mr. Nichols in his edition of Britton, vol. 11, p. 333, has commented upon as not having been fulfilled by Britton.

The second treatise of the fifth book treats of *essoins*, a term of law of which the origin is somewhat obscure, for it is difficult to accept Sir Henry Spelman's deriva-

tion : *Essonium* or *exonium* from *ex* privativum and *soing cura*, that is, *ab angustia, cura, vel labore liberare*. The noun "*essonium*" seems to have been used in *Bracton's* time to signify an excuse for not appearing in court to a summons, and the verb "*essoniare*" to make excuse on behalf of a person for not appearing in court to a summons. The same train of thought which has suggested that "*feud*" is a Frank abbreviation of "*emphyteusis*" has suggested that "*essoins*" is derived from the Greek *ἐξέμνησθαι*, whilst other etymologists have discovered in "*essoniare*" a medieval corruption of the Latin *exonerare*, and cite in support of their view the Norman form of the word "*exoine*." But it is probable that the primary meaning of the word "*essoins*" was not an excuse for not appearing, but an obstacle, which prevented the party summoned from appearing in court on the day appointed, and that the earliest form of the word was "*soinus*," which was a Latinised form of the Germanic "*sonnis*." Thus to carry back our inquiry systematically, let us commence with the *Costumal* known as the *Laws of Henry I.*, which, although it may have been compiled at a period subsequent to the reign of that king, purports to be framed upon the customs of his time. We find in these laws several instances of the use of the word "*soinus*," of which the following passage may be selected as an illustration :—

"Si de nominatis placitis terminum non suscepit,
 " nisi competens *soinus* eum detineat, et non venerit,
 " omnium reus sit, de quibus placitum suscepit."

I have quoted the above passage from the text of the *Ancient Laws and Institutes of England* as edited by *Thorpe*, who refers his readers to another reading of the word, namely "*essoins*" as found in *MSS. Selden and Twysden*. I prefer, however, the reading of "*soinus*," as it connects the language of the Anglo-Saxon law more immediately with that of the *Capitularies of the Emperor Charlemagne* and with the *Laws of the Salian* and

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Riparian Franks. Thus in the capitularies of Charlemagne, c. vi. § 211, it is provided: Si quis ad mallum legibus mannitus fuerit, et non venerit, si eum *sonnis* non detinuerit, quindecim solidis culpabilis judicetur, similiter ad secundam et tertiam. So a law of the Salian Franks, Tit. I., provides: Si quis ad mallum legibus dominicis mannitus fuerit, si eum *sunnis* non detinuerit, 600 denariis, qui faciunt solidos quindecim, culpabilis judicetur. So a capitulary of the Riparian Franks of the year 803, Tit. V., provides: Si quis ad mallum legibus bannitus fuerit et non venerit, si eum *sonnis* non detinuerit, quindecim solidis culpabilis judicetur. Sic ad secundam et tertiam. I have quoted these passages from Walter's Corpus Juris Germanici Antiqui, and it is obvious that the laws are all derived from a common source. At a period about a century later the monk Marculfus drew up his formulary, and we find him using the word "sunnia" in a similar sense in the following passage: "Ipse nec venisset ad placitum" "nec nulla sunnia nuntiasset," l. II., § 37. As Marculfus dedicated his Formulary to Pope Lando, who became Pope A.D. 912, and was succeeded in the same year by Pope John X., this circumstance enables us to fix the date of this passage with reasonable accuracy. But after all, if we are able to establish the fact that the words "sonnis" and "sunnia" were in use amongst the Franks in the sense of impediments sufficient to excuse a person for non-appearance upon a summons to attend his lord's court, it does not follow that the Romance form of exoigne was not the offspring of their supposed alliance with the Latin word "exoneratio," pronounced "ex-oniatio." In the Longobardic code the word assumed the forms of "sumnis" and "sommnis" and the modern German word "saumniss" signifies in the present day an impediment causing delay. In England, on the other hand, the word not merely assumed a certain counterfeit dress as if it were of Latin origin, but it

changed its meaning to suit its new dress, and came to signify an excuse by reason of an impediment instead of its proper meaning of an obstacle on the way.

Whatever may have been the origin of the word "essoins" it seems probable that the practice of allowing three essoins to each party in a cause was a tradition of the Carolingian period, for the further practice of Glanville's time of taking into the hands of the king the lands of the tenant, if he made default a fourth time, was also a provision of the capitularies of Charlemagne. A fourth essoin was only allowed in a case of languor, that is, of a tedious illness, perhaps incurable. I am disposed to think that the term essoin was originally confined to an excuse on the ground of bodily illness, first of all for illness on the way in coming to court, in which case the essoin might be made by a single messenger; secondly, for illness confining the party to his bed, which was to be certified by two messengers; and thirdly for languor or permanent illness, the excuse of which was only admitted after the sick man's condition had been verified by four credible knights or vavasours. The other excuses for non-appearance in court by reason of detention in a prison or of attendance on the king in war, or of a pilgrimage to the Holy Land or to St. James' of Compostella, seem originally to have been classed under the head of "delaïements" in the earliest Norman Coutumier, whilst in Glanville's time they rank under the general class of essoins.

There can be little doubt, I think, that juridical science in England during the reign of Henry II. had taken the lead of juridical science in Normandy. The field for improvement was larger in England, whilst the hands of the King of England were more free than the hands of the Duke of Normandy, and so far from England borrowing her legal institutions from Normandy, the Kingdom imparted its improvements to the Duchy. When Rollo and his Norsemen settled in

Neustria and did homage to king Charles the Simple of France for the Norman Duchy, they accepted the feudal institutions of Neustria. Duke Rollo, for instance, did not invent the office of vicecomes. He found it ready to his hand. In like manner William the Norman was no less fortunate on his arrival in England, as he found the allodial ealdorman and the scirgerefa already converted into a comes and a vicecomes by Canute the Dane. But the earls and the viscounts in England were not identical with the counts and the viscounts of continental feudalism. The strong hand of the Danish conqueror had substituted for the immediate territorial connexion between the ealdorman and the scirgerefa a personal connexion only between the earl and the viscount, by constituting the earl the personal superior of several viscounts. William the Norman went a step further, and snapped the official link between the earl and the viscount, and constituted the viscount the fiscal officer of the king, and his sole judicial representative in the county court, reserving for himself or for a justiciary sent on behalf of the crown the cognisance of the more important pleas. So far the king had succeeded in constituting himself the supreme fountain of justice and the personal guardian of the peace of his realm. But in these matters he had made little or no advance beyond the institutions which he had left behind him in Normandy; he had merely assimilated in respect of the counties the institutions of his newly acquired kingdom to those of his hereditary duchy. The institution of a great justiciar of England, which was forced upon the Norman king by his occasional absence from England, was the starting point of a new system, which, although it did not acquire any striking development during the Conqueror's reign, was pregnant with important consequences after the justiciar had become a permanent functionary. The creation of the justiciar's office was in fact a new point of departure; it inaugurated a new

principle of government distinct from that of the sword ; it initiated the reign of law, and its significance was discovered as soon as Roger le Poer, bishop of Salisbury, was advanced from the office of the king's chancellor to that of chief justiciar in the 7th year of king Henry I.

In no department of legal procedure is the progress of juridical science since the reign of Henry I. more evident than in the regulation of the right of essoin, a right of vital importance to the security of property, and most essential as a barrier against the abuse of the judicial autonomy of the vicecomes. Glanville had evidently attached great value to the regulation of the right of essoin, but Bracton has devoted a separate treatise to the subject, which Glanville was content to discuss by the way, and it would seem as if the attention of the king's justiciaries had been directed in the early part of the reign of Henry III. to the simplification of the procedure, and in pursuance of the recognition of the "attornatus" in the king's court to the shortening of the delay incidental to the system of essoins. It has been already observed in the introduction to the third volume of the present work that the office of "attornatus" was first recognised in England during the time when Hubert de Burgh was chief justiciar (1215-1232). The "responsalis" had been recognised in the king's court in Glanville's time. The responsalis, however, could only be appointed by the principal party himself appearing in court before the king's justiciaries resident in the Bench, and again the functions of the responsalis were limited to the special business of the particular suit. The case was otherwise with the attornatus. His powers were more ample, and they might be general, so as to provide for the case of his principal being absent in the king's service abroad, or on a pilgrimage to the Holy Land or to St. James of Compostella. The attornatus might also be appointed by letters of attorney, so that the institution of such an officer made a great

inroad into the feudal system, under which the feudatory was liable to be summoned to appear in person before the lord's court, and in default might risk the forfeiture of his feud.

It will be seen that some progress had been made in the time of Bracton in simplifying the procedure in the matter of essoins. It should be borne in mind that Bracton discusses the law of essoins in their application to real actions, in which questions of difficult and doubtful right were sure to arise. A first step, however, had been made in limiting the exercise of the right of essoin, when a great assise was substituted for the duel. The object of the limitation, according to Glanville, was to save labour and to reduce expense. "*Assisa enim,*" are his words, "*tot non expectat essonia, quot duellum, ut ex sequentibus liquebit, ac per hoc et laboribus hominum parcitur et sumptibus pauperum.*" L. II. ch. vii. § 1.

Further, in an assise of novel disseysine no essoin was allowed. The reason given by Glanville was that the courts did not spare a person who had taken the law into his own hands. "*In hac autem recognitione nullum essonium admittitur. Prima enim die sive venit sive non is, qui disseysinam fecerit, procedit recognitio, quia hic nemini parcitur, nec majori, neque minori, nec etiam warrantus expectabitur.*" L. XIII. ch. xxxviii. § 1. Bracton himself also rests the denial of an essoin to a disseysor on the ground of the disseysine being an act of spoliation, for which the party disseysed might claim summary redress. "*Revera non jacet essonium in odium spoliationis, quia denegari debet eis dilatio.*" F. 340 b. And here perhaps it may be apposite to suggest a distinction between an assise of novel disseysine and a recognition of novel disseysine. An assise of novel disseysine was a form of suit instituted by King Henry II. with the advice of his council; a recognition of novel disseysine was a part of

the process of such suit. An assise of novel disseysine when instituted by King Henry II. was limited to disseysines which had taken place since the last voyage of the king into Normandy, but this limit might be varied by an ordnance of the king in council. "Postremo," says Glanville, "*de illa recognitione, quæ appellatur de nova disseysina, restat dicendum. Cum quis itaque infra assisam domini regis, id est, infra tempus a domino rege de consilio procerum ad hoc constitutum, quod quandoque magis, quandoque minus censetur, alium injuste et sine judicio disseysiaverit de libero tenemento suo, disseysito hujus constitutionis beneficio subvenitur et tale breve habebit.*" L. XIII. cap. xxxii.

The king's writ, which follows this passage, specifies the last voyage of King Henry II. to Normandy as the limit of time, within which the disseysine must have taken place. This limit, however, had been curtailed in the time of Bracton by an ordinance which is recorded in the Patent Rolls of 21 Henry III., and by which the time was limited to the last return of King Henry III. from Normandy.

Medical science, if it existed in any degree in England at this time, was not invoked in aid of justice to decide the question, whether the essoinee was fit in point of health to comply with the summons of the court. That he should fall sick by the way was a common occurrence, seeing that the parties summoned lived for the most part in a country where there were no high roads, where the bridges were frequently broken down, and the rivers were out in flood, and the traveller had to sleep in the open air. The occasions accordingly for an essoin of sickness by the way would not be unfrequent, and it was held sufficient that a single essoiner should appear at the court to announce the sickness of the absentee. In such a case the essoiner might be required to find sureties or to pledge his faith, that he would present his

principal in court on a further day. This might be twice repeated in a case of bed-sickness, but after the third essoin the party was ordered peremptorily to appear either in person or by a responsalis authorised by him "to win or to lose" the cause. The responsalis, whose title was borrowed from the Roman law, had, as already observed, a limited authority. He does not appear in Glanville's time to have been required to produce letters mandatory, if he were a blood relation of the party, but after the "attornatus" had come upon the scene, the viscount might send four knights to visit the sick man and to require him to appoint an attorney. The responsalis, however, does not disappear altogether from the scene, as it was sufficient in a case of languor, where the cause had been adjourned for a year and a day to the Tower of London, that a responsalis should appear on behalf of a party on the day appointed. The difficulty in a case of languor, where the cause was adjourned for a year and a day by the king's justiciaries, was to determine to what court it should be adjourned, with a certainty that the court would be sitting on the day appointed, for there was no certainty as to the judges itinerant being present in the county on a given day, neither was there any certainty that any justiciary would be resident at the Bench at Westminster on a given day; the result appears to have been that the cause was adjourned to the Tower of London, where the parties were to appear before the Constable of the Tower, an officer bound to be in continual residence in the Tower. We learn from the passage in Bracton, f. 353 b., which explains the reason of this recourse to the Constable of the Tower, that a justiciary was not continuously resident throughout the year at the Bench. The course of proceeding after the parties had appeared at the Tower seems to have been in this wise. The constable certified their appearance and gave them letters to the justiciaries, if any were in residence at the Bench, and

if none were then in residence, the letters were to be presented to the justiciaries who should come first into residence, and thereupon the justiciaries at the Bench were to transmit the cause to the justiciaries itinerant, if they were in the county where the cause originated, or they were bound to hear it themselves, if there were no justiciaries itinerant in the county.

The adjournment of the cause to the Tower of London in the case above mentioned was made for a year and a day. In the Carlovingian Capitularies the provision is simply "*si infra annum non venerit.*" The practice of a year and a day was observed in Glanville's time. How it originated does not appear, but a day was probably added to the year in consideration of the fact that every solar year consisted of three hundred and sixty-five days and six hours. Copernicus had not lived at the time when Bracton wrote, and astronomers still relied on the observations of Hipparchus, which had led Ptolemy to devise a planetary system, of which the sun was the master planet, revolving round the earth and constituting by its revolution the alternation of day and night. But Julius Cæsar had ascertained during his sojourn in Alexandria that a later school of Egyptian mathematicians had discovered certain errors in the Ptolemaic calculations, and accordingly he decided on his return to Rome to correct those errors and to introduce a new and amended calendar. It will be rather a surprise to the reader to find a chapter in the present volume dedicated to a scientific exposition of the Ptolemaic system. Bracton has already intimated that the Julian calendar was in use in the English courts of justice by stating, that the justiciaries were accustomed in granting a further day after an *essoïn* to appoint a day after or before a given festival, or after or before the *ides* or the *calends* of a given month ; and, further, he had remarked that if the year should be bissextile, the day appointed might prove to be unlawful, f. 357. A further

perplexity arose in calculating the year and a day in the case of an *essoïn* for languor, when the party had been assigned to appear at the Tower within a year and a day. How was the period so assigned to be calculated when the year in which it was assigned was bissextile, and it consisted of three hundred and sixty-six days instead of three hundred and sixty-five days? Was the last day to be regarded as an excrescent day, or as an ordinary day of the current year? The origin of the term *bisextus* dates from the Julian reform of the Roman calendar. The year of Numa Pompilius consisted of three hundred and fifty-five days, into which a month termed *Mercidonius* was intercalated every second year after the time of the Decemvirate, subject to certain variations in the number of its days so as to constitute an average year of three hundred and sixty-six days and six hours; but this average being astronomically too great, twenty-four days were omitted in every twenty-four years, so as to diminish the average to three hundred and sixty-five days and six hours. This very complicated method of calculating the legal year at Rome continued down to the time of Julius Cæsar, who recast the Roman calendar, establishing twelve months in the place of ten, and dividing the ordinary year into three hundred and sixty-five days; and, further intercalating a day of twenty-four hours in every fourth year. As under the old system of the Decemviral year the month *Mercidonius* had been intercalated immediately after the 23rd February, the anniversary of the *Terminalia*, Julius Cæsar directed the 24th day of February to be doubled in every fourth year, and as the 24th day of February was the sixth day before the calends of March the double day was styled thenceforward *bi-sextus*. Under the Roman system this double day was calculated as a single day, and a person born at any hour of the double day was born on the sixth day before the calends of March. "*Cum bisextum kalendis est,*" says Celsus, "*nihil refert (utrum) priore an pos-*

“ *teriore die quis natus sit, et deinceps sextum kalendas ejus natalis est : nam id biduum pro uno die habetur ; sed posterior dies intercalatur, non prior ; ideo quo anno intercalatum non est, sexto kalendas natus ; cum bisextum kalendis est, priorem diem natalem habet.*” 98.

It might have been reasonably expected, that the king's justiciaries would have had no difference of opinion as to the mode of dealing with the excrescent day in leap year, but as a writ of right was a proceeding under the feudal law, it seems to have been doubted amongst the king's justiciaries, whether the calculation of the Roman law was applicable to an *essoïn* for languor in a proceeding under a writ of right. There seem to have been two difficulties, first as regarded the usual year of three hundred and sixty-five days and six hours, whether an appearance during the six hours was an appearance within a year and a day, and secondly whether in leap year an *essoïnee* for languor was within time, if he appeared on the three hundred and sixty-seventh day. Bracton was apparently in favour of the former view and adverse to the latter. These doubts were destined to be appeased in England by a statute of the realm, the date of which is left in some uncertainty, for it is open to doubt whether the text of the statute itself has been preserved. It has been customary to print amongst the statutes of the realm a document, which in point of form has the appearance of a writ addressed by the king to his justiciaries, and which in the early editions of an English text of the statutes has been assigned to 21 Henry III. So early a date, however, of the statute cannot well be reconciled with Bracton's text, as the king's writ was calculated to put an end to the doubts, which Bracton states to have been entertained by some of the king's justiciaries at the time when he composed his treatise *De Essoniis*. Two other dates, however, have been assigned to the so-called statute, namely, 40 Henry III. and 44 Henry III.

The first rests on the authority of a text preserved in the Red Book of the Exchequer originally kept in the chapter house at Westminster; the second rests on a text preserved in MS. Cotton Claudius, D. II. in the British Museum, which has been copied by Hawkins and by Ruffhead into their respective editions of the Statutes. The editors of the recently revised Statute Book have adopted the text of the Red Book of the Exchequer, which is as follows:

"H. Dei gratia Rex Anglie, Dominus Hybernie, Dux
 "Normannie, Aquitanie, et Comes Andegavie justici-
 "ariis suis de Banco salutem. Sciatis quod cum in regno
 "nostro de anno et die qui languidis per breve nos-
 "trum (de Recto) inplacitatis prefigi consuevit, quo
 "modo scilicet et a quo die anni precedentis in alium
 "diem anni sequentis debuit annus ille et dies in
 "anno bisextili accipi et computari, diu exstiterit
 "dubitatum; nos, volentes uniformitatem ubique in
 "regno nostro super hoc observari, et periculis liti-
 "gantium precaveri, providimus et de consilio fide-
 "lium nostrorum statuimus, quod ad delendam de cetero
 "omnem super hoc ambiguitatem computetur dies ex-
 "crescens in anno bisextili in ipso anno; ita quod
 "propter diem illum non occasionentur aliqui inplaci-
 "tati, set sit et habeatur de mense illo, in quo ex-
 "crescit, et contineatur dies ille excrescens in integri-
 "tate anni predicti; et computentur dies ille et dies
 "proximus precedens pro unico die. Et ideo vobis
 "mandamus, quod hoc coram vobis publicari et de
 "cetero faciatis observari. T. me ipso apud Wynde-
 "soram ix^o die Maii a^o regni nostri xl^{mo}.

On the other hand, the text of the so-called statute preserved in MS. Cotton Claudius D. 11 in the British Museum purports to have been issued in the forty-fourth year of Henry III., the testimonium clause being of this tenor: *Teste me ipso apud Westm. anno regni regis* "H. quadragesimo quarto," whilst the text commences *Rex* "Justiciariis suis de Banco salutem." It is hardly neces-

sary to observe that this is the text of a writ addressed to the king's justiciaries, and that the original testimonium clause must have contained the words "anno regni nostri," instead of the words "anno regni regis Henrici." This alteration in the testimonium clause is probably due to the desire of the scribe of the MS. to place on record the name of the king, which does not occur at the commencement of the writ.

If we assume that this document, as printed in the last revised edition of the Statutes, was issued in the 40th year of King Henry III., the said 40th year would be a bissextile year, as Henry III. came to the throne A.D. 1216 and it would be reasonable that such a statute should be forthwith communicated to the justiciaries, who were about to set out on their iter with a view to its publication by them and to their acting upon its provisions.

The course, which was pursued in the case of the previous Statute of Merton (20 H. III.), may throw some light on the practice in such cases. King Henry III. held a court at Merton on 23 January 1235, in which certain constitutions were established by him with the consent of the magnates. Those constitutions were forthwith embodied in a Royal writ directed to the viscounts throughout the realm and to the justiciaries in Eyre, and the writ was issued to them on 30th January next following. By this writ the new constitutions were directed to be published in every county court and to be firmly kept. The text of this writ was further enrolled and is now preserved in the Close Rolls of 20 H. III. m. 18 d. The fact of this enrolment enables us to verify the accuracy of the text of the constitutions of Merton as preserved in MS. Claudius Cotton, D. 11. It is from the same MS. that Hawkins and Ruffhead have both derived their text of the so-called Statute of Leap Year, which purports to have been issued in 44 Henry III. That a writ should have been addressed in that

year for a second time to the king's justiciaries is not improbable from two circumstances: it was in the first place again Leap Year and the justiciaries were about to proceed upon their circuit; in the second place the king had recently reverted to the constitutional practice of appointing a chief justiciary (*Justitiarius Anglie*), having ruled since 1244 without either a chief justiciary or a chancellor or a treasurer. It was amongst the stipulations of the so-called "Mad Parliament" of Oxford in 42 H. III. that there should be again a chief justiciary, a chancellor, and a treasurer, and in 43 H. III. a justiciary of England reappears after an interval of twenty-six years, whose name is recorded in the *Abbreviatio Placitorum* of 44 H. III. as holding the office of chief justice. I am disposed to regard the so-called statute of 44 H. III. as merely a fresh issue of a Royal writ of the same tenor as the writ of 40 H. III., and the renewed issue of the writ in that particular year is supported by the style of the king, inasmuch as King Henry III., in the month of October of the forty-third year of his reign, ceded to King Louis X. of France the provinces of Normandy, Anjou, Touraine, Maine, and Poitou, and thereupon discontinued the use of the titles of Duke of Normandy and Count of Anjou. We find the king accordingly described in his second great seal, as well as in the charters after the year 1259, as *Henricus Dei gratia Rex Anglie. Dominus Hybernie, and Dux Aquitanie*, and such is the royal style in the writ of A.D. 1260 (44 H. III.). I pass by another text of a similar writ contained in the *Liber Scacc. Westm.* x. fol. 22 b., which has a *testimonium* clause of a still later date, "*Quarto die Junii anno regni nostri quinquagesimo quarto.*" If we assume this document to be authentic, it is an instance of a further writ of a like tenor with the previous writs addressed to the king's justiciaries. There was, however, no Parliament sitting at Westminster in the month of June 1270, as we know from the *Liber*

de Antiquis Legibus, which is preserved in the archives of the Corporation of London, that the Parliament of 1270, which was called for April 27, 1270, was adjourned from the paucity of members in attendance to July 2, 1270.

On a review of these concurring circumstances there can be little doubt, I think, that the various versions of the so-called Statute of Leap Year are in fact repeated issues of the royal writ enjoining the king's justiciaries to observe the statute. Unfortunately the Great Roll of the Statutes, as it is termed, does not go so far back as the reign of Henry III. The statute of Gloucester, for instance, 6 Edward I. (a^o 1278) is the earliest statute now extant on any statute roll. But we have not merely a justification in the language of the royal writ of 40 H. III. (*providimus et de consilio fidelium nostrorum statuimus*) for regarding that writ as the embodiment of a statute, but an important confirmation of that view is supplied by the text of Fleta.

Bracton, in treating of an essoin for languor, has observed that if it be an essoin for non-appearance before the justiciaries on their iter, an appearance on a further day will have to be made before the Constable of the Tower, as the justiciaries may neither be itinerant in the county nor resident at the Bench on a given day. In like manner he briefly adds that the appearance will have to be made at the castle in a county. Fleta, when he comes to discuss the question of an essoin for languor, makes no reference to the Tower of London, but says the essoin is to be allowed for a year and a day, when the party must appear at the castle (*apud castrum*). He then goes on (L. VI., cap. xi.) to discuss the appearance to be made at the castle, following very much the language used by Bracton as to a reasonable day's journey of the essoinee who has to appear at the Tower, and then he observes :

“ § 2. De anno vero bisextili fit tale breve ; rex justiciariis suis de banco salutem. Sciatis quod cum in regno nostro de anno et die quo languidis, per breve nostrum implacitatis, præfigi dies consuevit, quo modo scilicet et a quo die anni præsentis in alium diem suum sequentem debuit annus ille et dies in anno bisextili computari, diu extiterit dubitatum. § 3. Nos volentes uniformitatem ubicunque in regno nostro super hoc observari, et periculum litigantium præcaveri providimus et de consilio fidelium nostrorum statuimus, quod ad delendam super hoc ambiguitatem computetur dies ille et dies ex crescens in integritate in unicum annum et diem, ita quod propter diem illum non occasionentur aliqui implacitati ; et ideo vobis mandamus, quod *hoc statutum* coram vobis publicari faciatis et de cætero observari.”

It will be seen on comparing this document, which Fleta explicitly describes as a writ, with the text of the so-called Statute of Leap Year in the Statute Book, that they are documents of an identical character, but there is this remarkable feature in Fleta's writ, that it contains the words “*hoc statutum observari*” whereas the so-called statute has only the words “*hoc observari*.” The conclusion on comparing Fleta's writ with the earlier documents would appear to be that there was a Statute of Leap Year, of which the roll, if it ever existed, has perished, whilst the substance of the statute has been preserved in the writ, which has been entered in the Red Book of the Exchequer.

I have previously stated that there are certain features in Bracton's work which may warrant the theory, that the chapter on Essoins was written before the treatise de Acquirendo Rerum Dominio was completed. The fact that Bracton makes no reference to the statute respecting Leap Year is a strong presumption, that he wrote the

chapter on Essoins before 40 H. III., if we may rely upon the Red Book of the Exchequer for the true date of the Statute of Leap Year. On the other hand, the reference to the confirmation of the election of Earl Richard as king of the Romans being still contingent, which occurs in the treatise *De Acquirendo Rerum Dominio*, f. 47, warrants us in supposing that treatise to have been composed or at least completed in the early part of the year 1257 (41 H. III.).

I have alluded above to the course pursued in the instance of the Statute of Merton of sending a Royal writ to the king's justiciaries ordering them to publish the statute on their iter. We have but a faint insight into the working of the king's courts during the reign of H. III., and it is somewhat of an enigma to understand how in the absence both of a chief justiciary and of a chancellor the due administration of justice was maintained. The king had no doubt able clerks, and Bracton himself, as we know, was a Royal clerk before he was advanced to the post of a justiciary. The practice during this reign in respect of a new law seems to have been for the Crown to issue a Close Letter to the justiciaries and Letters Patent to the inferior authorities enjoining them to give effect to the new statute, and as the examples of this practice are rare, an instance may deserve to be cited, of which a record is preserved in the *Liber de Antiquis Legibus* already referred to, as being in the archives of the Corporation of London. We should otherwise have had no knowledge of a statute passed in the 51 Henry III. (a^o. 1271) to forbid the Jews to become possessed of any freehold tenements except for their own habitation. The Letters Patent sent on this occasion to the mayor and viscounts of London are preserved in the manuscript above mentioned. They are of this tenor: "H., Dei gratia Rex Anglie, " Dominus Hybernie, Dux Aquitanie, dilectis et fidelibus suis, majori et vicecomitibus Londoniarum et

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" omnibus ballivis et fidelibus suis, ad quos presentes
 " littere pervenerint, salutem. Sciatis quod ad hono-
 " rem Dei et universalis ecclesie ac emendationem et
 " utilitatem terre et relevationem Christianorum de
 " dampnis et gravaminibus, que sustinuerunt occasione
 " liberorum tenementorum, que Judei regni nostri
 " clamabant habere in terris, tenementis, feodis, reddi-
 " tibus et aliis tenuris, et ne nobis seu communitati
 " regni nostri vel ipsi regno possit de cetero prejudi-
 " cium generari, providimus de consilio prelatorum,
 " magnatum et procerum, qui sunt de consilio nostro,
 " ac etiam ordinavimus et statuimus pro nobis et
 " heredibus nostris, quod nullus Judeus liberum tene-
 " mentum habeat in maneriis, &c., &c." I omit the
 further recitals and provisions of the writ, as the Letters
 Patent occupy a whole page of the work as edited by
 Mr. Thomas Stapleton for the Camden Society in 1846;
 the concluding clause is as follows: " Et ideo vobis pre-
 " cipimus, firmiter injungentes quod provisionem, ordi-
 " nationem et statutum predictum publice per totam
 " ballivam vestram proclamari et firmiter teneri
 " faciatis. In cujus rei testimonium has literas nostras
 " fieri fecimus patentes. Teste me ipso apud West-
 " monasterium xxv^o die Julii anno regni nostri quin-
 " quagesimo quinto." We can have little hesitation, I
 think, after this instance, to arrive at the conclusion
 that the so-called Statute of Leap Year which is main-
 tained in the revised Statute Book is not the original
 statute itself, but a Royal writ founded on the statute
 and of like authority.

The thirteenth chapter of the treatise on Essoins, in
 which Bracton explains the peculiarities of the Bissextile
 year, is very curious. If we are to place the errors of
 arithmetic, which occur in several parts of this chapter,
 to the account of Bracton himself, and not of the scribe,
 who has misread or miscopied Bracton's numerals, we
 should have to credit Bracton with only a moderate

amount of mathematical attainment, in fact with having omitted to master the first rudiments of arithmetic before undertaking to explain a most difficult problem of the higher mathematics. But I am not disposed to attribute to Bracton himself, but rather to the scribe, the miscalculation of the number of moments in a day in the following passage:—"Hora autem fit ex quadraginta momentis et sic fit dies ex novem millibus et sexcentis momentis." Several MSS. support this reading, but on referring to MS. Crewe (Add. MSS. No. 11,353) in the British Museum, another reading is found, which is in harmony with the laws of arithmetic:—"Hora autem fit ex quadraginta momentis et sic dies constat ex novem centum et lx. momentis," The division of the hour into forty moments, which Bracton has previously used in his treatise on an assise of mortdancester, fol. 264, has been already discussed in the introduction to the fourth volume of the present work, p. xxx., as having been in use in the University of Bologna in the time of Accursius. I have since ascertained that the division of the hour into forty moments was in use in England in the eighth century, as I shall proceed to show, and that it was based on astronomical principles, which warrant the presumption that it continued in use in England until Bracton's time, and was not a foreign importation of the civilians. One or two other errors of Tottell's text in high numbers may also be put down to the account of the scribe, as it was not unusual for the scribe to omit the numerals of the thousands and to give only the hundreds and the tens. Bracton himself, however, is probably responsible for the omission of the hundreds, where he says that an essoinee ought to appear at the Tower on the sixty-sixth day, when he really has in his mind the three hundred and sixty-sixth day, that is a full calendar year and a day. On the other hand, we have two instances of an opposite practice in stating the high numbers and dropping the low

numbers, which are probably attributable to the scribe, namely, where the text describes the number of days in four solar years as one thousand and four hundred days, instead of one thousand four hundred and sixty-one days. This apparent miscalculation I am unwilling to attribute to Bracton, as in the sentence almost immediately preceding he has described the solar year as consisting of three hundred and sixty-five days and the fourth part of a day.

I have found no direct clue to the authority upon which Bracton has relied in expounding the system of the Julian calendar. His language would not lead us to suppose that he was familiar with the writings either of Censorinus or of Macrobius, the two best authorities on the subject of the reform of the calendar instituted by Julius Cæsar, whilst his fanciful comparison of the Julian year to a serpent with its tail in its mouth savours rather of monkish than of classical lore, and we may not be very far from the mark in conjecturing that he found that illustration in some commentary on the writings of the Venerable Bede, to whom the introduction of the adjective "bissextilis" to denote the year in which the day termed bisextus was intercalated, in other words leap year, is generally attributed. I have not, however, been successful in discovering the metaphor of the serpent in the writings of the Venerable Bede himself, but there have been numerous commentators on his philosophical treatises, of which the widespread study is testified by the copious Gloss of Bredefert of the famous Benedictine Abbey of Ramsey, and by the Scholia of John of Lisieux.

Beda, as is well known, was regarded by his contemporaries as a prodigy of learning. He was born probably A.D. 672, and died A.D. 735. Boniface, the apostle of Germany, Beda's contemporary, calls him the candle sent by God for the spiritual illumination of the church. His *Historia Ecclesiastica Gentis Anglorum*, perhaps the most

highly prized of his writings, is believed to have been translated into Anglo-Saxon by king Alfred, at least such is the tradition which attaches to the Anglo-Saxon version, which has been printed by Dr. Ingram in parallel columns with the original Latin text of the work. There is no doubt that Beda's learning was very extraordinary for the age in which he lived, and it speaks favourably for the collection of MSS. in the united monasteries of St. Peter and St. Paul at Wearmouth and at Yarrow, in which he passed his life devoted to study, to teaching, and to writing. The epithet "Venerable" appears to have been applied to Beda in the ninth century, and it has been customary since that time always to speak of him as "the Venerable Bede." I have gone thus briefly into the history of Beda with a view to show that he was a writer of great research, whose works, of which he has himself left a catalogue compiled four years before his death, were of the highest authority amongst his contemporaries, and of which the historical portion supplies in the present day the most trustworthy materials for the early history of Britain and the Anglian settlements in it.

Beda, however, did not confine himself exclusively to historical studies, although his philosophical writings are not so widely known nor so generally read as his ecclesiastical history. Beda appears to have composed a treatise entitled *De Temporibus* A.D. 703, and upon the representation of his brother monks that he had treated the subject too briefly, more especially with regard to the proper determination of Easter, then much controverted, he composed a fuller treatise entitled *De Temporum Ratione*, A.D. 725, and to this latter work he subjoined a chronicle entitled "*De Sex hujus sæculi Ætatibus*." It is in the last portion of the chronicle entitled "*Sexta Ætas*" that Beda treats of the birth of Christ, and supplies a brief record of the reign of each of the Roman emperors down to the ninth year of Leo

Isauricus (A.D. 729) with the date of the accession of each, calculated from the Incarnation of Christ. Beda upon the credit of this work enjoys the reputation of having introduced into England the system of dating events from the era of Christ.

There can be no doubt that at the time when Beda composed his "*Sexta Ætas*" the practice of inserting the date of the Incarnation in charters and other public instruments was not usual in England. The earliest charters so dated, of which the genuineness is not disputed are those of Sigere King of Kent, and of Eardulf King of Kent, which are dated respectively *indictione XV. anno Domini Incarnationis DCCLXII.*, and *anno ab Incarnatione Christi DCCLXII., indictione XV.* Both of these charters are cited by Sir Thomas Duffus Hardy in his *Introduction to the Rotuli Chartarum*. In speaking of these charters as the earliest English charters in which the date of the Incarnation is used, I am not unaware of the existence of a document which is dated "*anno recapitulationis Dionisi, id est ab incarnatione, sexcentesimo octuagesimo indictione sexta revoluta.*" This document purports to have been issued by Oshere, King of the Hwicci, who began to reign over the Hwiccians, a people occupying a territory co-extensive with the bishoprick of Worcester, in the year 680. But the authenticity of this document is open to suspicion, not merely by reason of the date being prefixed to it, but because the sixth indiction does not coincide with the year of our Lord 680. The reference to the recapitulation of Dionysius may demand a few words of explanation.

Dionysius, surnamed *Exiguus*, a Scythian monk and subsequently a Roman abbot, is believed to have first used the date "*ab incarnatione Christi*" about the year 527 after the birth of our Saviour, and hence the Christian era was at first termed *Recapitulatio Dionysii*. The system, accordingly, of dating documents from the Incarnation did not come into use in Italy until the middle of the

sixth century, and although it was introduced into France in the seventh century, it was not generally used there until the eighth century. It is possible therefore that King Oshere may have had at his court a French monk, who was conversant with the new system of dating documents in France, and who thought it necessary to explain his use of it, by inserting the words "Recapitulationis Dionisi," as explanatory of his authority for the date of the Incarnation. There is further a remarkable feature of this document, which points to a foreign hand, and to which I have already alluded, namely, that it commences with the date, whereas it is usual in the Charters of Anglo Saxon Kings to add the date at the end of them.

However this may be, Beda's Treatise on the "Sixth Age of the World," was the first work that rendered his countrymen familiar with the Christian era, and so prepared the way for its general adoption in England in the latter half of the eighth century. I have alluded to this fact as showing that Beda in dealing with the divisions of time had carefully studied his subject, and I may add that he was not a blind follower of Dionysius Exiguus, as Beda's computation of the date of the Incarnation commences two years before the vulgar era of the Scythian monk. When Beda, accordingly, in his treatise "De Temporum Ratione," discusses the division of the solar year into months and days and hours and moments, we have the testimony of a writer accurately versed in the mathematical learning of his day, and who explains the divisions of time, which were then in general use, in accordance with a system of solar and sidereal observation, the phenomena of which may have been correctly noted, although it was attempted to explain them upon a false hypothesis. Beda, accordingly, having said in the earlier part of chapter ii. *De Temporum Ratione*, and I quote from the edition of his works published by Herwagius at Basle in 1563, "Recipit autem hora iiii.

"punctos, x. minuta, xv. partes, xl. momenta et in
 "quibusdam lunæ computis v. punctos," refers towards
 the conclusion of the same chapter to the mathematical
 subdivision of the zodiacal circle into 172,800 momenta.
 "Attamen mathematici in explorandis hominum geni-
 "turis ad atomum usque pervenire contendunt, dum
 "zodiacum circulum in xii. signa, signa singula in
 "partes xxx., partes item singulas in punctos xii.,
 "punctos singulos in momenta xl., momenta singula
 "in ostenta lx. distribuunt, ut considerata diligentius
 "positione stellarum fatum ejus, qui noscitur, quasi
 "absque errore deprehendant." I quote this passage
 by reason of Beda's reference to the science of the as-
 trologers, in which, however, he had no faith, and for the
 purpose of illustrating the astronomical use of the term
 "momentum" as designating the fortieth part of a
 "point" in the zodiacal circle.

But it may be asked what is a moment of time, and
 what is the meaning of the term "momentum" when
 employed to designate the fortieth part of an hour of
 the day? A complete answer to these questions is
 supplied by Beda himself, and still more fully by the
 Gloss of Bredefert of Ramsey. Bredefert says, "Si vis
 "scire quot atomos et momenta et punctos et horas
 "habeat (sic) in die vel in hebdomada, necnon et in
 "mense naturali, istam calculationem attende et in-
 "venies. Primitus ad horam incipiamus. DLXIII
 "atomi faciunt unum momentum, quatuor momenta
 "faciunt unum minutum, duo minuta et dimidium
 "faciunt unum punctum solarem, quatuor puncti
 "faciunt unam horam solarem." Cap. iii. The same com-
 mentator goes on to say, "Momentum vero est quadra-
 "gesima pars unius horæ. Ita enim voluerunt as-
 "trologi minutissimum siderum motum per umbras
 "intelligere, ut quadragesimam partem unius horæ
 "sentirent, dum umbram per quadragesimam partem
 "in horologio ipsius spatii, quod unum horam signi-

"ficat, signifer transiret. Nec hoc suffecerat iis, sed
 "et minora addidere spatia, quæ vocantur ostenta.
 "Unum enim momentum ostentum semis compre-
 "hendit. Maxima ergo spatia divisionum unius horæ
 "puncta dicuntur, minora vero ostenta vel atomi.
 "Sed ut prædiximus, punctorum duæ sunt mensuræ,
 "una quidem quartam partem unius horæ, id est,
 "decem momenta, altera vero quintam continet,
 "habens in se octo momenta." Cap. xv.

It would appear from this statement of Bredefert of Ramsey that on the horologium, or hór-dial, forty spaces were marked as subdivisions of the hour, over which the shadow of the index (gnomon) travelled with the movement of a star, as the star was supposed, according to the Ptolemaic theory, to rotate round the earth. There were thus indicated on the dial forty appreciable movements of a star in the interval of time marked on the dial as an hour, or, if the sun was observed, forty appreciable movements of the sun.

Further, it would appear that the observers of the heavenly bodies in Beda's time were accustomed to use some instrument in the nature of a micrometer for the purpose of measuring the velocity of the movement of the sun in its supposed daily course of revolution round the earth, so that each space marked as a moment indicated an identical portion of the sun's daily course in the heavens which it had travelled over, in other words indicated that a certain portion of the artificial day of twenty-four hours had elapsed. Thus Beda in his "Computi Ratio" says: "Porro momenta a motu syderum celeberrimo nuncupantes, dum aliquid sibi brevissimis in spaciis cedere aut succedere sentitur," or as it is more explicitly stated in the Gloss upon Chapter II. of "De Temporum Ratione." "In initio motionis momentum fit, initium enim motionis, quo movetur sidus aliquod, momentum dicitur, non tota motio sideris vel cujusque rei, sed hoc est, cum

“ aliquid sibi id est, sideri cedere, scilicet a loco ; id
“ transire atque succedere, scilicet in loco, *quod per*
“ *foramen probatur, quando stella aliquid perspi-*
“ *citur.*” This is a remarkable passage, as it is a fore-
cast of Galileo’s telescope, that is, of the tube without
the lenses ! I do not venture on the present occasion
to offer more than a general explanation of the experi-
ment. My object has been to show that the division of
the hour into forty moments was a scientific division,
grounded at the time when it originated upon a careful
method of observing the heavenly bodies, to which
nature then set limits, which optical science has long
since enabled the observer to overleap.

It would thus appear that the division of the hour of
the day into forty moments was well known in England
in the time of Beda, and that a tradition of it was
handed down amongst learned men, so that it should
not excite in us any surprise that Bracton makes use of
that division of the hour. I have spoken of the Ptole-
maic system, as if it were generally received in England
in Beda’s time, but in speaking of the system of Ptolemy
I do not mean the writings of Ptolemy, but simply his
system, according to which the earth was regarded as
the centre of the visible universe, and the sun was held
to revolve round the earth in the course of a day and a
night of twenty-four hours. It seems probable from the
citation which I have made in my introduction to the
fourth volume of a passage from the writings of Papias,
an Italian grammarian of the XIth century, that the
Italians were not at that time acquainted with the
writings of Ptolemy, which were first brought to the
notice of European astronomers through the translations
made by the Moors of Spain. Sir George Biddell Airy,
who has so long and so ably filled the office of the
Astronomer Royal, has kindly informed me that there
is no trace in Ptolemy’s works of the division of the
hour into forty moments. “ Ptolemy’s scale of time,”

he says, "is very remarkable. Beginning with the day " he divides it into sixty parts (of course each part " equal to twenty-four minutes of our time), and he " divides each part by sixty, and then divides by sixty, " and so on." It would seem, in fact, he elsewhere says, " that Ptolemy himself, and his followers, whenever " they attempted anything accurate, resorted to sexa- " gesimals." The strange fact still remains unaccounted for that no English Glossary or Encyclopædia makes mention of the ancient division of the hour of the day into forty moments, notwithstanding it must have been a scientific division of the hour in England during more than five centuries.

There is a special *essoin* mentioned by Bracton which deserves a passing notice, as it is not recognised in the *Ancienne Coutume de Normandie*, and it seems to have been peculiar to the English courts, namely, an *essoin* for vill-sickness. Glanville has noticed it in l. I, cap. xxviii. This notice of it leads us to infer that the king generally held his courts of justice in some vill, unlike the feudal lord, who was accustomed to summon his vassals round his tent or his castle. Bracton speaks of this *essoin* as anomalous, inasmuch as it does not follow the rules of other *essoins*, and defines it otherwise than Glanville. The latter treats of it as an *essoin* in the case where a person has arrived in a vill to prosecute his suit, and is unable from illness to appear in court. On the other hand, Bracton applies it to the case of a party, who has appeared the first day in court and is unable from some supervenient infirmity to appear the next day in court, and who, if he be detained by his infirmity more than four days, may appoint an attorney "*ad lucrandum vel perdendum*." This was a step in advance of the principle that an *essoinee* for bed-sickness could not appoint an attorney, and it tended to facilitate the administration of justice. Fleta (l. VI. c. xiii) is content to copy the language of Bracton on this

subject, with the further observation that the essoin of vill-sickness was not admitted in the county court. Britton, on the other hand (l. VI., c. vii., § 4), promises to discuss the essoin of vill-sickness in a future chapter, which has either been lost or was never completed.

Bracton concludes his chapter on essoins with a reference of some historical interest as illustrating the judicial career of Martin de Pateshull. I have appended a note p. 610 of the first volume of the present work calling attention to a correction supplied by M.S. Rawl, C. 160, of an error in Tottell's text, which has perplexed many commentators. Tottell's editor, in speaking of the first pleas after the war in the County of Essex has misinterpreted the contraction of the word "comitatu," and has rendered it "communem," so that the passage in Tottell's edition reads, "post guerram communem Essex," instead of "post guerram comitatu Essex." I have observed in that note that the case there cited by Bracton is the earliest case cited by him. I ought to have said ex majori cautela the earliest case cited by Bracton, in which he gives the name of the party to the suit, so as to allow of our identifying the case. Bracton, in fact, alludes to a still earlier case in his concluding chapter of essoins, fol. 364, as confirmatory of the position that the record of the four knights sent by the court to take a view of a party essoined *de malo lecti*, could not be impeached. In support of this position Bracton says, "You have a case in the iter of Martin de Pateshull, in the county of Leicester, in the time of King John." Unfortunately Bracton does not name the year, nor the party concerned in the suit. All that we can learn from the passage is that Martin de Pateshull was one of the judges *itererant* in the reign of King John. I have already, in the introduction to vol. II., commented on this fact, as having escaped the notice of Mr. Foss, who in his "Lives of the Judges" speaks of Martin de Pateshull as having

been raised to the Bench very soon after the accession of H. III.

The last treatise of the present volume, which is entitled in Tottell's edition the third treatise of the fifth book, is in several manuscripts not noticed as a separate treatise, but is continued as an integral part of the treatise which precedes it, having simply the heading *De Contumacibus*, &c. prefixed to it. Glanville has treated the question of the absence of the party summoned very briefly (l. I. c. vii.) and according to the order of the feudal law, whereas Bracton discusses the doctrine of contumacy at considerable length, distinguishing between defaults in real actions and defaults in mixed actions, meaning by the epithet "mixed" such actions as are directed *in rem* as well as *in personam*, and in which defaults are to be adjudged according to the same rules that apply to real actions. At the conclusion of the fourth chapter, where the special treatment of defaults terminates, Bracton makes a curious allusion to proceedings under a writ of *Quo warranto*, which writ at a later period of our legal history was converted into an instrument of great oppression on the part of the Crown against certain corporate bodies. There seems to have been a difference of opinion amongst the highest legal authorities in Bracton's time, whether if a person was summoned to shew by what warrant he held a certain tenement, which the king claimed either as an escheat or as of his ancient demesne, the tenement forthwith, upon the default of the tenant to appear, should be taken into the hands of the king or not. Bracton, contrary to the opinion of some others, held that the rule applicable to a real action should prevail in pursuance of the additional words in the writ "and which land the king claims as his escheat." Otherwise, however, he observes, if a writ of "*quo warranto*" without any such additional words is sued out against a tenant of land, inasmuch as the inability of the tenant

to prove his right to hold the land would not of itself establish any right on the part of the claimant to take it, an attachment only of the tenant should take place, if he failed to appear, and not a caption of his land. He then goes on to observe, that although the claimant by a proceeding under a "quo warranto" would not acquire for himself the land of the party, whose title he sought to impeach, and it was against the civil law that a possessor should be compelled by a writ of "quo warranto" or of "quo jure" to disclose his title, nevertheless the proceeding by a writ of "quo warranto" was effective for a claimant, in order that he might ascertain generally by what title the tenant claimed to hold his land, whether as heir or as possessor, and thereby he might know by what action he ought to proceed, if he sought to recover it. It would thus appear that the king's justiciaries were at this time introducing a new principle into proceedings for the recovery of real estate by allowing the claimant to sue out a writ of discovery, so far as to enable him to ascertain the general nature of the tenant's title. Certain of the high legal authorities were opposed to the prerogative right of the king, so to say, to a writ which would comprise two actions under one proceeding, and under which, if the tenant failed to appear, his land would be forthwith taken into the hands of the king. What seems however to have given colour to this high handed proceeding, and to have recommended it to the support of the king's justiciaries was that it was an effective weapon for the Crown to use against the Norman adventurers, whom King John had introduced into England, and against whose aggressions Hubert de Burgh, as chief justiciary, had to struggle for a long time in vain, although he was ultimately successful in compelling Fulk de Breaute, their leader, to leave the kingdom in 1224. But notwithstanding the bulk of the alien barons had withdrawn into Normandy before 1244, they continued up to that year to draw

large revenues from their possessions in England, so that the king at last with the double motive of making himself popular with the English barons and of increasing the revenues of the Crown, so as to be independent of the supplies which the Parliament of 1244 had refused to grant, caused all the lands of the Normans to be seized and confiscated. Thenceforth it would seem to have been the normal duty of the king's justices itinerant to hold an inquest in every county respecting "the lands of the Normans," with a view to ascertain by what warrant they were held, and, if they were held without a warrant from the Crown, to seize them into the hands of the king. Bracton supplies an illustration of this practice on the part of the king's justiciaries in the articles of enquiry, which he has set out at length in his treatise *de Corona*, fol. 116. This liability of all lands derived from the Normans to be confiscated to the Crown seems to have been maintained even in Britton's time, as in his chapter on the king's rights (l. I. ch. xix) directions are given for an inquest to be made "concerning the lands of the Normans, and of felons who hold of us in chief, which have been aliened after the commission of the felony," and even Fleta, in his chapter "*De Brevibus Visuum*," (l. VI. c. xxii, § 1.) speaks of the proceeding of *Quo warranto* under which the king was entitled to a view of the land, which he claimed in his court "*ut eschætam suam de terris Normannorum*." Of course after Henry III. had ceded his rights over the Duchy of Normandy to King Louis of France in 1239, the Normans would have ceased to owe any allegiance to Henry III. or to his successor; but it may well have been the case that the Crown claimed to seize at any time lands, which had been derived from Normans who had been in possession of them after 1244. Matthew Paris, in his *Historia Anglorum*, Rolls edition, vol. II. p. 480, gives the fullest account of the king's decree of confiscation.

After stating that Ralph de Neville, the king's chancellor had died on the calends of February, he goes on to say :

"Circa eadem tempora dominus rex, considerans quod Normanni bona regni irrevocabiliter ingrati ex terris et redditibus opulentis, quos habebant in Anglia, annuis asportabant, omnes fecit in manu sua seisisi; rege tamen Francorum occasionem suscitante."

It deserves remark that at this time Henry III. governed his kingdom without either a justiciar, or a chancellor, or a treasurer, but he seems to have had a body of able councillors, who were of English origin, and one of whom, John de Lexington, figures at a subsequent time frequently amongst the justiciaries itinerant. His name is mentioned by Bracton on an occasion of a judgment given by him at Clarendon, which Bracton did not consider to be sound law. "Casus iste evenit " apud Clarindone in præsentia Johannis de Lexinton, " et male ibi fuit terminatum, objecta quadam exceptione servitutis contra primo feoffatum," f. 45. At the time when Bracton criticised this judgment he must already have had some experience of the duties of the office of justice itinerant.

The subject matter of the next chapter (V.) is somewhat inconsistent with the general title which Tottell's editor has prefixed to the treatise, namely " De Defaltis," inasmuch as it treats of the appearance of the plaintiff and of the declaration to be made by him on the appearance of both parties in court. The science of pleading had made considerable progress since Glanville's time, and Bracton's contemporaries had borrowed from the civil law the term "intentio," which they employed to signify the statement on the part of the plaintiff, or what is now styled in English procedure the declaration. Whether such was the precise meaning of the term "intentio" as a term of the Roman law of procedure may be open to some doubt, as we have but a limited insight into the improved procedure of the

Roman courts through the discovery of the Institutes of Gaius during the present century. But the Bractonian purport of the word "intentio" corresponds to that for which the Norman French word "counte" is used by Britton (l. I, ch. xxxii. § 15), and for which the legal term "count" is still in use in the English courts.

The special pleader had not as yet found a vocation open to him in the English courts, nor does Bracton speak of the "narratores" or "counters" as an order of legal practitioners, but they were well known in his time on the continent of Europe. In England, on the other hand, the duty of narrating or of counting seems to have devolved upon the order of serjeants-at-law in the next following reign of Edward I., for the author of the *Mirroir des Justices* dedicates a chapter to countors, "Countors sont serjeants sachant la Ley del Roialme, qui servent al commission des people à prononcier et defendre les actions en jugement pur ceux qui mestier ent ont pur loier," ch. ii., sect. 5. I pass over the technical rules, which Bracton lays down respecting the articles of the declaration. He observes that a writ of right could not set up a title beyond the time of King Henry, the grandfather of the lord the king, because no witness could speak either from his own memory or from that of his father beyond that time. Hence, he says, if a claimant should speak of the time of King Henry the elder (Henry I.), he might lose his cause from failure of proof. And here Bracton speaks of a curious practice under which, upon payment of a fee, the tenant might have mention made of the time, where the claimant, having made an error in the time, had placed himself on a great assise. "Et unde cum quis post talem errorem inde se posuerit in magnam assisam, dat aliquando tenens de suo pro habenda mentione de tempore," f. 373. Mr. Reeves seems to consider this favour to the tenant to have been

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a relic of the ancient practice of selling justice, which the kings of England had renounced in those memorable words of the great charter of liberties, "Nulli vendemus, nulli negabimus aut differemus rectum aut justitiam." Art. 40. He considers, however, that the great charter did not contemplate the abolition of all fees, as a moderate recompense to the officers of the court for their labour and attendance. He further goes on to say that there is an obscurity in this passage, that renders it difficult to make out any meaning at all, inasmuch as Bracton, having used the word "mentio" to express the naming of the time of the seysine in the claimant's writ, uses it afterwards to signify the moving of the question of seysine by the tenant. It is unfortunate that Britton's later work breaks off abruptly after discussing essoins, so that it throws no light upon the passage in Bracton, whilst Fleta also omits all allusion to the subject.

There is an old adage of the law courts, "optimus interpretus usus," and we can fortunately appeal to the practice of the king's court to clear up the difficulty. Whatever may be the correct interpretation of Bracton's language, there was *primâ facie* nothing corrupt in the court allowing the tenant to make a statement on his part as to the time of his seisine, where it was calculated to disprove the case of the claimant either as negativing a fact alleged by the claimant, or as showing that the ancestor from whom he claimed was not *in rerum natura* in the reign of such a king. Besides, the tenant was entitled in equity to put the claimant in his turn upon the proof of his title, inasmuch as the issue to be decided by a great assise was which of the parties had the greater right. We have here the first germ of the practice, known in later times as *the tender of the demi-mark*, of which there is an apposite illustration in the proceedings on a writ of right set out by Sir William Blackstone in the Appendix to the third

volume of his Commentaries. From these proceedings (tempore Georgii I. et II.) we learn that it was competent for the tenant in possession, when a claimant had put himself upon a great assise, to put the claimant on the proof of his alleged title by tendering in court the sum of six shillings and eightpence to the use of the lord the king. This was entitled "the tender of the " demi-mark," the mark being thirteen shillings and fourpence, two thirds of a pound sterling. This tender of a demi-mark on the part of the tenant was accompanied by the prayer, that an inquiry should be made into the title alleged by the claimant. We are disposed to regard the requirement of the court, that the tenant on such occasions should pay a moderate fee to the king's use, in the nature of a test of the good faith of the tenant in challenging the claimant's title.

The seventh chapter takes up the question of exceptions, the classification of which into peremptory and dilatory is evidently borrowed from the civil law. Having simply touched upon them in a short chapter, Bracton defers the further treatment of this subject, preferring, as he says in the eighth chapter, to collect them all as it were into one bundle (in unum fasciculum colligere), and to discuss them all together in order. The rest of the treatise is devoted to "the making of a view," in order that a thing certain may be brought into judgment. The object of the view was to inform the tenant precisely of the quantity of land, of which the freehold was claimed by the plaintiff, in cases where it could not be otherwise ascertained by description or by specification, or else of the quantity of land, out of which a rent or common of pasture was claimed, or in respect of which suit of court was demanded. It would appear from the cases cited in illustration of the law in such matters that Bracton had access to the Plea Rolls from the commencement of the reign of Henry III., although it seems doubtful whether the names of the justiciaries were

entered on the rolls in the two first years of that king's reign. Bracton, for instance, cites in the present treatise five cases of pleas in the second year after the war, in none of which is the name of a justiciary mentioned, neither is any such name mentioned when he cites a case amongst the first pleas after the war, f. 376, b. The same remark will apply to the various cases in other parts of his work, which Bracton cites either as the first pleas after the war, or as the pleas in the second year after the war, or as the pleas in the second year of King Henry after the war, the war in question being that which King John transmitted as a legacy to his successor. This war saw Lewis, son of Philip, king of France, to whom the barons of England had offered the crown, master of the city of London, where he received the homage and fealty of the English barons. It was this war which all but imperilled the succession of Henry III., who was crowned at Gloucester, and whose main support was the loyalty of the barons of the western shires. The coronation of Henry III. took place on Oct. 28, 1216, but the normal administration of justice was suspended by the operations of the war until the conclusion of the treaty of Lambeth on Sept. 11, 1217, after which the child-king re-issued the great charter in its final form. From this time the annual circuits of the king's justiciaries were resumed, and it is from this period that the cases in question are dated. But Bracton has made an exception on two occasions in favour of Martin de Pateshull. On the first occasion Martin de Pateshull seems to have been president of a commission to dispose of a variety of cases waiting for judgment immediately after the war. On the other occasion Martin de Pateshull gave judgment in Banco in the second year after the war. Whether Martin de Pateshull had been more careful than the other justiciaries of his time to have his judgments enrolled, we have no means of ascertaining, but it is by no means

improbable that Bracton himself was present on both occasions and took a note of the judgments. From the familiar manner in which Bracton speaks of Martin de Pateshull, sometimes citing him as dominus Martinus and sometimes simply as Martinus, it has been thought that Bracton was on terms of personal intimacy with that eminent judge, who was certainly one of the most distinguished ornaments of the bench at Westminster in an age of distinguished judges.

The Temple, 1882.

T. T.

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HERE ENDS THE FOURTH TREATISE OF THE FIFTH BOOK.

HENRICI DE BRACTON
DE
LEGIBUS ET CONSUECUDINIBUS ANGLIÆ.

HENRICUS DE BRACTON
ON THE
LAWS AND CUSTOMS OF ENGLAND.

Q 6366. Wt. 2377.

A

HENRICI DE BRACON
DE
LEGIBUS ET CONSUEUDINIBUS ANGLIÆ,
TRACTATUS SECUNDUS LIBRI QUARTI:
IN QUO TRACTATUR DE INGRESSU.¹

CAP. I.

1.
Ubi locum
habet ista
actio.

f. 318.

Dictum est supra de causa possessionis, quæ per assisas et recognitiones terminatur: nunc autem dicendū de causa proprietatis, quæ terminatur per juratā ex testimonio et probatione eorum, qui probare possunt de visu suo proprio & auditu, s. ubi quis seysinam suā ppriam petierit, vel alicujus antecessoris sui, quam de voluntate sua de aliqua re ad terminum annorum vel ad terminū vitæ aliis dimisit, & q̄ post terminum p̄teritum ad ipsum reverti debeat, & ubi locum non habeat assisa novæ disseysinæ, quia contra voluntatē suam & injustè non est disseysitus, nec etiam assisa mortis antecessoris, quia antecessor suus non obiit seysitus ut de feodo in dominico suo, quia alius inde habuit liberū tenementū qui rem illam tenuit ad vitam, q̄ quidem aliter esset si ad terminū annorū, quamvis centum, q̄ vitam hominum excederet. Et non solū locum habet ista actio versus eum qui rem ita receperit ad terminum, verum etiam contra omnes qui talem habent ingressum, quatenus gradus et tempus pmiserint. Non

¹ Hic incipit Tractatus Septimus libri Quarti de Ingressu. MS. Rawl. C. 160.

THE FOURTH BOOK
OF
HENRICUS DE BRACTON
ON THE
LAWS AND CUSTOMS OF ENGLAND.
THE SEVENTH TREATISE,
WHICH TREATS OF ENTRY.

CHAPTER I.

We have treated above of a cause of possession, which is determined by assises and recognitions; now^{1.} indeed we must treat of a cause of property, which is^{Where this action has place.} determined by a jury upon the testimony and proof of those, who can prove by their own sight and hearing, for instance, where a person has claimed his own seysine, or the seysine of some ancestor of his, which he has of his own will demised to others for a term of years, or for the term of their life, and where an assise of novel disseysine would not have place, because there is no disseysine against his will and unjustly, nor indeed an assise of mort-dancester, because his ancestor has not died seysed of it as of fee in his own demesne, because another person had the freehold thereof who had the estate for life, which would be otherwise if he had it for a term of years, as for instance for one hundred years, which would exceed the life of men. And not only this action has place against him who has so received the estate for a term of years, but against all who have such an entry, as far as degree and time shall

f. 318.

Britton, v.
ch. xiv.
§ 7.
Fleta, 361.

enim excedit tertiam gradum, nec tempus q̄ excedit testimoniū, de visu et auditu. Item non solū locum habet versus eos qui per tales habent ingressum, sed locum habet versus alios, qui ingrediuntur per tales, et qui rem transferre non possunt sine consensu aliorum, licet aliquod jus habet¹ transferendi: ut canonicus sine assensu episcopi et capituli. Item si uxor sine consensu viri, et e converso si vir sine consensu uxoris, si abbas sine consensu capituli. Item si celerarius clericus,² vel alius pcurator sine consensu abbatis vel prioris, vel aliorum quorum cōsensus requiri debet in translatione facienda. Item locū habet hæc actio versus omnes qui ingressum habent per tales qui transferunt, et qui liberum tenementum non habent nec jus transferendi, nisi q̄ sunt in nuda possessione et nomine aliorum, et transferunt contra voluntatē dominorum, ut custos, vel ballivus, dum aliquis infra ætatem, vel absens, vel in prisiona, vel non sanæ memoriæ, vel alio modo, secundū q̄ inferius plenius dicitur. Et notandū quod hæc dictio (terminus) largè se habet, et ad terminum vitæ, & ad terminum annorum qui p̄terit. Et sciendum q̄ ille qui ad terminum annorū dimittit, quamvis longissimum, dum tamen p̄bari possit ingressus ex testimonio visus & auditus, retinet sibi dominium, pprietatem, feodū, et liberum tenemētum si hæc omnia prius habuerit, vel q̄dam eorū, secundum q̄ prius habuerit. Nihil enim transfert ad firmarium ad firmam nisi q̄ uti possit & frui, s. habere usum & p̄cipere fructum. Et unde bene poterit pprietarius hæc omnia ad aliū transferre, q̄ sibi retinuit, sine injuria firmarii, q̄ si non fecerit, hæc omnia transfert ad hæ-

¹ "habeant," MS. Rawl. C. 160. | ² "clericus," omitted, id.

permit. For it does not exceed the third degree, nor a time, which goes beyond testimony from sight and hearing. Likewise it has place not only against those who through such persons have entry, but it has place against those who enter through such persons, and who cannot transfer the estate without the consent of others, although they have some right of transferring it, as a canon without the assent of the bishop and the chapter. Likewise if a wife without the consent of her husband, and conversely if a husband without the consent of his wife, if an abbot without the consent of his chapter. Likewise if a steward clerk or other agent without the consent of the abbot or prior, or of others whose consent ought to be sought for in making a transfer. Likewise this action has place against all who have entry through such as transfer, and who have not a freehold nor a right to transfer, except that they are in the bare possession and in the name of others, and they transfer against the will of the lords, such as a steward or a bailiff, whilst some one is under age, or absent, or in prison, or of not sound memory, or in some other manner which will be explained more fully further on. And it is to be noted that this word "term" has a wide meaning, and applies to the term of life, or to a term of years which has passed. And it is to be known that he who demises for a term of years, although of very great length, provided only that entry can be proved by the testimony of sight and hearing, retains for himself the dominion, the property, the fee, and the freehold, if he had all these previously, or a certain portion of them according to what he had previously. For he transfers nothing to the farmer to farm but what he can use and enjoy, that is to have the use and to reap fruits thereof. And hence a proprietor may well transfer all these things to another, which he has retained for himself, without injustice to the farmer, because if he has not done so, he transfers all these things to his heirs.

redes suos. Item notandum q istæ dictiones (ad terminū qui pteriit) generales sunt, et terminare possunt plures casus speciales, et in narratione facti suppleri poterit q min⁹ dictū est in brevi, & cū generale sit, prius dicatur de eo. Forma brevis talis est.

2.
Breve, si
quis di-
miserit ad
terminum
qui præ-
teriit.

Rex vicecomiti salutē. Præcipe A. q justē & sine dilatione reddat B. tantū terræ cum ptinentiis in tali villa, q idem B. ei dimisit ad terminū qui pteriit (ut dicit), et nisi fecerit et B. fecerit te securū de clamore suo psequendo, tunc summoneas p bonos summonitores pfatum A. q sit corā justiciariis nostris &c. ad primā assisā cū in ptes illas venerint, ostēsurus quare non fecerit. Et habeas ibi summonitores et hoc breve. Teste &c.

3.
De modo
procedendi
in hujus-
modi
placito.
f. 318 b.
Britton, v.
ch. xv. § 1.
Fleta, 364.

Qualiter autem tenens summoniri debeat, et si non venerit ad summonitionem, qualiter defalta puniri debeat, infra diciū pleniū in actionibus realibus. Poterit autem se essoniare si voluerit de malo veniendi, & non de malo lecti, quia nunquā locum habebit essoniū de malo lecti, nisi breve de ingressu per narrationē vertatur in breve de recto, ppter lōgissimū ingressum, qui pbari non poterit per visum pprium alicujus & auditū sed alienum, & ubi agi oportet de necessitate de mero jure p magnam assisam vel per duellum. Et cū breve de ingressu incipiat esse alterius naturæ quā primò fuit, s. breve de recto, merito debet habere omnia quæ breve habet, cujus naturam sequitur in narratione, & vice versa, si contingat q per narrationem vertatur breve de recto in breve de ingressu, desinit habere naturam brevis de recto, & sic amittet essonium

Likewise it is to be noted that these expressions (for a term which has passed) are general, and may determine many special cases, and in the statement of the facts there may be supplied that which has been understated in the writ, and since this is general, let us first treat of it. The form of the writ is of this kind.

The king to the viscount greeting. Enjoin A. that justly and without delay he restore to B. so much land with its appurtenances in such a vill, which the said B. has demised to him for a term which has passed, as he says, and unless he has done so, and if B. has given you security to prosecute his claim, then summon by good summoners the aforesaid A. that he present himself before our justiciaries, &c., at the first assise, when they shall come into those parts, in order to show cause wherefore he has not done so. And have there the summoners and this writ. Witness, &c.

But in what manner a tenant ought to be summoned, and, if he has not appeared to his summons, how his default ought to be punished, is expounded more fully in real actions. For he may essoin himself on account of sickness on his journey, and not on account of sickness in bed, for an essoin on account of sickness in bed will never have a place, unless a writ of entry has been converted by the declaration into a writ of right on account of a very remote entry, which cannot be proved by the proper sight or hearing of any one, but only by one from hearsay, and where the action of necessity must be about the absolute right by a great assise or by battle. And when the writ of entry begins to be of a different nature than it was at first, to wit, a writ of right, it ought to have deservedly every thing which a writ has, whose nature it follows in the declaration, and conversely, if it happens that through the declaration a writ of right is turned into a writ of entry, it ceases to have the nature of a writ of right, and so it will lose an essoin of

2.
A writ, if a person has demised for a term, which has passed.

3.
Of the mode of proceeding in a plea of this kind.
f. 318 b.

Britton, *ib.* de malo lecti ratione præmissa. Sed si cū breve de
§ 2.

recto per narrationē incipiat esse breve de ingressu, & petens narrationem suā pposuerit & fundaverit, & paratus sit pbare eam p patriam, tamen in voluntate tenentis est utrum ponere se voluerit in juratā de ingressu tali vel non, cū tria habeat remedia, s. defendendi se p duellum, vel ponendi se in magnam assisam de jure, vel in juratā de ingressu. Sed cū in voluntate tenentis sit eligendi quā istarum viarum¹ voluerit, nō prius fiet breve de recto breve de ingressu, quā tenens elegerit defendere se p juratā cōtra ingressum: ut si abbas, prior, vel alius petierit versus aliquē p breve de recto aliquam terrā ut jus ecclesiæ suæ, vel alius ut jus suū p verba de recto & ut de jure mero, & adjiciat in fine clausulam istam: Et in quam non habet ingressum nisi p talem prædecessorem vel antecessorem suum, qui terrā illam ei dimisit ad certū terminum &c.; vel si aliquis dicat: Et in quam non habet ingressum nisi p talem quæ fuit uxor talis, quæ terram illā tenuit in dotem de dono talis, cujus hæres ipse petens est, & quamvis tempus brevis de ingressu hoc permiserit, non tamen ppter hoc vertitur breve de recto ad breve de ingressu, sed in suo statu durabit p omnia, nisi tenens gratis se posuerit in juratā de ingressu. Vertitur quandoq; e converso p narrationē breve de ingressu ad breve de recto, de necessitate & non de voluntate: quandoq; ppter longissimum ingressum, quandoq; ppter donū & feoffamētum. Propter longissimum ingressum, qui pbari non possit de alicujus visu pprio vel auditu, sed alieno, sicut de visu patris & auditu qui injūxit filio: quo casu ppter necessitatē, &

¹ "jurntarum," MS. Rawl. C. 160.

sickness in bed for the reason premised. But when a writ of right through the declaration begins to be a writ of entry, and the claimant has propounded and founded his declaration, and is prepared to prove it by the country, nevertheless it is at the option of the tenant whether he wishes to put himself upon a jury concerning such entry or not, since he has three remedies, to wit, of defending himself by battle, or of putting himself upon a great assise concerning the right, or upon a jury concerning the entry. But since it is at the option of a tenant to elect which of these ways he wishes, a writ of right shall not become a writ of entry before that the tenant has elected to defend himself by a jury against the entry: as if an abbot, prior, or another has claimed against any one by a writ of right any land as the right of his church, or another person as his own right by words concerning the right and as of absolute right, and should add at the end this clause: and into "which he has no entry, except through such a predecessor of his ancestor who demised that land to him for a certain term &c." or if some one should say "and into which he has no entry except by such a person, who was the wife of so-and-so, who held that land as dower by the grant of so-and-so, whose heir the claimant is," and although the time of the writ of entry has permitted this, the writ of right is not on that account turned into a writ of entry, but it will continue in its own state through everything, unless the tenant has put himself gratuitously on a jury concerning the entry. Conversely a writ of entry is sometimes turned into a writ of right by the declaration, of necessity and not of option, sometimes on account of a very remote entry, sometimes on account of a grant and a feoffment. On account of a very remote entry, which cannot be proved by any one's own sight or hearing but only by that of another, as by the sight and hearing of his father who enjoined his son: in which case on account

alterius p̄bationis defectū, oportet q' tenens se ponat in magnam assisam, vel defendat p̄ duellū. Ut si ingressus longinquus sit de tempore H. regis avi vel infra usq; ad tēpus assisæ mortis antecessoris, ut si dicatur: Et unde A. non habet ingressū nisi p̄ B. qui non nisi custodiam inde habuit cum C., cujus hæreditas terra illa fuit, & quæ fuit jus p̄dictæ C. matris B. uxoris ejus qui petit, & p̄ quā p̄dictus talis & uxor ejus qui petunt clamant terrā illā, & postea sic: Et unde p̄dicta talis avia fuit seysita in dominico suo ut de feodo & jure tēpore talis regis capiendo inde expletia &c. et de tali descendit jus &c. sicut p̄ breve de recto. Et quo casu oportet q' tenens se ponat in magnam assisam vel defendat se p̄ duellum in defectu alterius p̄bationis, nisi sit qui dicat q' breve cadere debeat p̄pter tēpus et longissimum ingressum. Si autē in¹ tempus permiserit, tenens habebit electionem ponendi se in juratam de ingressu, quousquē se posuerit in magnam assisam vel se defenderit p̄ duellum. Ponere autem se poterit in juratam per hæc verba. Defendere enim poterit talem ingressum, & q' nullum habet ingressum per talem, quia antequām talis aliquid inde haberet, fuit ipse tenens seysitus p̄ alium talem, & ita q' per prædictam aviam nullum ingressum habuit, sicut ipse petens dicit, & p̄venire poterit ad inquisitionem si tempus permiserit de ingressu, p̄ hæc verba, scilicet si p̄dictus talis tenens aliud jus, vel alium ingressum habuit in prædictam terram, quām p̄ ipsum talem, &c. qui terram illam dimisit B. uxori de hereditate A. &c. vel qui terrā illam ei dimisit de hereditate talis uxoris suæ, vel alio quocunq; modo, &c. Item

f. 319.

¹ "in" omitted MS. Rawl. C. 160.

of the necessity and the failure of any other proof it is incumbent that the tenant put himself upon a great assise, or defend himself by battle. As if the remote entry be of the time of Henry the grandfather of the king, or within that time up to the time of an assise of mortdancester, as if it be said: and whereof A. has no entry except through B. who had only the custody of it with C. whose inheritance that land was, and which was the right of the aforesaid C. the mother of B. the wife of him who claims, and through whom so-and-so aforesaid and his wife the petitioners claim that land, and afterwards thus: and whereof so-and-so aforesaid the grandmother was seysed in her demesne as of fee and of right in the time of the said king in taking thereof profits &c., from so-and-so the right descends &c. just as through a writ of right, and in which case it is incumbent that the tenant should put himself upon a great assise or defend himself by battle in default of any other proof, unless there be some one who says that the writ ought to fall on account of time and a most remote entry. But if time shall allow, the tenant will have an election of putting himself upon a jury concerning entry, until he shall have put himself upon a great assise or shall defend himself by battle. But he will be able to put himself upon a jury by these words. For he may defend such entry, and that he had not entry through such person, because before such person had anything thereof, he the tenant was seysed by another so-and-so, and so that he had no entry through his grandmother aforesaid, as he the claimant says, and he will be able to attain to an inquest, if time shall allow, concerning entry, through these words, to wit, if so-and-so aforesaid the tenant had another right or another entry into the aforesaid land, than through the said so-and-so &c. who demised the land to B. his wife of the inheritance of A. &c. or who demised that land to him of the inheritance of his said wife or in some other manner &c. Likewise that a writ

f. 319.

q breve de ingressu vertitur ad breve de recto, ubi contra ingressum de termino opponitur feoffamentum sicut ppter tempus longissimum, videri poterit in itinere W. de Ralegh in comitat North. de Pet de Galldington,¹ q petiit terrā versus W. de Breton p breve de ingressu, & ubi W. defendit talem ingressum, & dixit q habuit ingressum per antecessorem illum de cujus seysina idem Petrus petiit terram illam, qui de terra illa feoffavit eum tenēdum p homagio & servitio suo, & q tale fuit jus suum per feoffamentum, & non p talem ingressum, posuit se in magnam assisam, & pcessit assisa, quia clamavit tenere per feoffamētū per hęc verba, scilicet, utrum ipse majus jus habeat in terra illa, ut in illa quam talis antecessor predicti Petri ei dedit p homagio & servitio suo, an idem Petrus tenendi eam in dominico. Ad idem facit de termino P. año regis H. decimo quarto in coñ Wiltoñ de Radulph. de Moigne, quia tenens locutus fuit de feoffamēto antecessorum petentis de tempore L. annorum, ubi excedit tempus assisa² mortis antecessoris, statim desinit esse breve de ingressu, propter longissimum temporis ingressum nisi ex necessitate, ut infra. Item de hac materia inveniri poterit in rotulo de termino Sanctæ T. anno regis Henrici quarto in coñ Eborum de Petro de Malo Lacu & Isabella uxore ejus petentibus, & de priore de S. Oswaldo tenente. Si autem tenens omninò non venerit nec p se, nec p attornatum suum, tunc capiatur terra in manum doñ regis p magnum cape, q tale est, ut infra de actionibus realibus, et ibi breve. Et si ulterius aliam fecerit defaltam, tunc pcedatur cōtra ipsum postquam comparuerit p parvum cape, & tunc fiat ut ibi. In fine autē cū tenens comparuerit, vel

¹ "Goldyngtone," MS. Rawl. C. 160.

² "assisæ," MS. id.

of entry is turned into a writ of right, where against an entry for a term a feoffment is opposed as on account of a very long time, may be seen in an *Iter* of William de Ralegh in the county of Northampton, concerning Peter of Galdington, who claimed land against William de Breton by a writ of entry, and where W. denied such entry, and said that he had entry through that ancestor, concerning whose seysine the said Peter claimed that land, who enfeoffed him with that land to be held for his homage and service, and that his said right was by feoffment and not by the said entry, and he put himself upon a great assise, and the assise proceeded, because he claimed to hold through a feoffment, in these words, to wit, whether he had the greater right in that land, as the land which the said ancestor of the aforesaid Peter granted to him for his homage and service, or the said Peter to hold it in domain. To the same effect is the case of Radulph de Moigne in the Easter term in the fourteenth year of king Henry in the county of Wilts, because the tenant spoke of a feoffment of the ancestors of the claimant of fifty years standing, where it exceeds the time of an assise of mort-dancester, it ceases forthwith to be a writ of entry, on account of the entry being of a very long time, unless from necessity as below. Likewise on this subject a case may be found in the roll of the term of Holy Trinity in the fourth year of king Henry in the county of York, concerning Peter de Malo Lacu and Isabella his wife the claimants, and the prior of St. Oswald the tenant. But if the tenant has not appeared at all neither in person nor by his attorney, then let the land be taken into the hand of the lord the king by the great *Cape*, which is such as is described below concerning real actions, and the writ there. And if he has further made another default, then let proceedings be taken against him after he has appeared by the little *Cape*, and then let it be done as there. In the end however, when the tenant has appeared, he will be able to

excipere poterit contra b̄re, vel contra psonam petentis, vel alio modo multis de causis & multis rationibus, ut infra de exceptionibus plenius, cū petens intentionem suam pposuerit, fundaverit, & pbaverit, secundū quosdam. Non enim sufficiat¹ dicere q tenens talem habuit ingressum sicut ipse dicit, nisi docere possit q ad ipsum pertineat actio, & q ad ipsum debeat res reverti post terminū, ratione seysinę antecessoris sui, de cujus seysina fecerit mētionē nōn tamen narrare debet sicut p b̄re de recto, nisi ita sit q b̄re de ingressu versū sit in b̄re de recto. Sufficit enim si dicat, peto tantē terrā ut jus meū possessoriū si ad vitam tenuerit, vel ut hereditatē si teneat in feodo, & in quam talis non habet ingressū nisi p talem, &c., quia sufficit ista narratio tātūm ad seysinā in iudicio possessorio: ut si ille

f. 319 b. dederit ad terminū, vel in feodo, qui non tenuerit nisi ad vitā quacunq, ratione. Si autē mentionē fecerit de usu & expletiis, & in diūco suo ut de feodo, respōderi possit sicut ad breve de recto, & posset tenens se defendere per duellū vel magnam assisam q in hoc breve locū non habet. Potest etiam tenens defendere jus petentis & talem ingressum p talē, & dicere quōd non habet ingressum p talē de quo breve loquitur, immo per aliū talē, & inde se ponat in inquisitionē, & fiat tale breve de inquirendo veritatē, nisi tenens ita esse cognoverit sine inquisitione. Forma brevis talis erit, si fieri debeat inquisitio in comitatu.

4. Rex vic. salutē. Præcipimus tibi q venire facias coram te & corā custodibus placitorū coronæ nostræ in pleno comitatu tuo duodecim tam milites quām alios

Si respondet tenens, quod non

¹ "sufficit," MS. Rawl. C. 160.

except against the writ or against the person of the claimant, or in some other manner for many causes and for many reasons, as below concerning exceptions will be stated more fully, when the claimant has propounded his declaration, has supported it, and has proved it according to some. For it would not be sufficient to say that the tenant had such an entry as he himself says, unless he can show that he is entitled to the action, and that the estate ought to revert to him after the term by reason of the seysine of his ancestor, concerning whose seysine he has made mention, he ought not however to count as through a writ of right, unless it be that the writ of entry is turned into a writ of right. For it is sufficient if he says, I claim so much land as my possessory right, if he holds it for life, or as my inheritance, if he holds it in fee, and into which so-and-so has not an entry except through so-and-so, &c., for this count suffices only for seysine in a possessory judgment, as if he has granted it for a term or in fee, who is only tenant for life in some manner. But if he has made mention of use and profits, and in his own domain as of fee, an answer may be made as in a writ of right, and the tenant may defend himself by battle or by a great assise, which has no place in this writ. For the tenant may deny the right of the claimant and such an entry through such a person, and say that he had not an entry through such a person, concerning whom the writ speaks, nay through so-and-so another person, and thereupon may put himself upon an inquest, and let such a writ be made concerning an inquest into the truth, unless the tenant has confessed it to be so without an inquest. The form of the writ shall be of this kind, if the inquest ought to be held in the county.

f. 319 b.

The king to the viscount greeting. We enjoin you, 4.
that you cause to appear before you and before the
keepers of the pleas of our crown in your full county

If the
tenant an-
swers that

per talem
nominatum
in brevi,
sed per
aliū
talem.

liberos, legales, & discretos homines de visneto tali, per quos rei veritas meliùs sciri poterit, & qui A. de N. nulla affinitate attingant, & etiā qui nullo modo sūt essoniabiles, ad recognoscendū super sacramentū suum, si p̄dictus A. aliud jus vel aliū ingressum habuerit in talem terram cum ptinentiis in tali villa, quā per B. fratrem C. cujus hæres ipse est, qui terrā illam ei dimisit ad terminū qui p̄terit, vel si A. ingressum habuit p̄ D. qui terram illam dedit in feodo (ut idē A. dicit), quia tam prædict⁹ A. quā p̄dictus C. posuerunt se inde in juratā illam. Et inquisitionē quam inde feceris scire facias justic. nostris apud W. ad talem terminū evidenter, distinctè, et apertè per literas tuas sigillatas sigillo tuo, & sigillis prædictorum custodum placitorum coronæ nostræ, & per duos vel quatuor ex illis per quorum sacramentum inquisitionem illam feceris, & habeas ibi hoc breve & nomina eorum per quorum sacramentum inquisitionem illam feceris. Et ita per affirmationē petentis & contradictionē tenentis fit discussio per patriam de veritate, & secundum hoc aut remanebit tenens in seysina quousq; petens sibi perquisiverit per breve de recto, vel petens recuperabit seysinam suam per inquisitionem. Si autem fieri debeat inquisitio coram justiciariis & nō in comitatu, tunc fiat hoc modo.

5.
Breve, si
juratores
venire
debeant
coram jus-
ticiariis.

Rex vicecomiti salutem. Præcipimus tibi quòd venire facias coram nobis vel coram justiciariis nostris apud Westmonasterium duodecim &c. ad recognoscendū &c. si &c. quia tū &c. & interim terram illam videant, & se inde interim certificent, q̄ nos vel justiciarios nostros ad præfatum terminum plenius inde certificare possunt, & habeas ibi nomina recognitorum, & hoc breve. T. &c.

court twelve as well knights as other free, loyal, and discreet men of such a visne, through whom the truth of the matter may be more conveniently known, and who are not in any way connected with A. de N. by affinity, and who are in no manner essoynable, to recognise upon their oaths, if the aforesaid A. has had any other right or any other entry into such a land with its appurtenances in such a vill, than through B. the brother of C. whose heir he is, who demised that land to him for a term which has passed, or if A. has had entry into it through D. who granted that land to him in fee (as the said A. says), because as well the aforesaid A. as the aforesaid C. have put themselves thereon upon the said jury. And certify the inquest, which you have held thereon, to our justiciaries at Westminster at such a term evidently, distinctly, and openly by your letters sealed with your seal and with the seals of the aforesaid keepers of the pleas of our crown, and by two or four of those by whose oath you have held that inquest, and have there this writ and the names of those by whose oath you have held that inquest. And thus upon the affirmation of the claimant and the contradiction of the tenant a discussion of the truth is made by the country, and according to it either the tenant will remain in seysine, until the claimant has obtained for himself a writ of right, or the claimant will recover his seysine through the inquest. But if the inquest ought to be held by the justiciaries and not in the county court, then let proceedings be in this manner.

The king to the viscount greeting. We enjoin you that you cause to appear before us or our justiciaries at Westminster, twelve &c., to recognise &c. if &c., because as well &c., and meanwhile let them view the land and certify themselves thereon in the mean time, that they may be able to certify more fully thereon our justiciaries at the aforesaid term, and have there the names of the recognisors and this writ. Witness &c.

46 Q 6366.

B

not through
so-and-so
named in
the writ,
but through
so-and-so
a different
person.

5.
A writ if
the jurors
ought to
come
before the
justiciaries.

CAP. II.

1. Dictum est supra cūm petens intensionē suam simpliciter proposuerit, & tenens contra intensionē suā excipere noluerit, sed simpliciter posuerit se in juratā de ingressu. Nūc autē dicēdum est si tenens excipere voluerit contra intensionē, inprimis necesse est q petens intentioni suæ fundamentū imponat, s. q doceat ad ipsū pertinere actionē, quia ipse tradiderit ad terminū, vel aliquis antecessor suus, cujus hæres ipse sit. Et non sufficit quōd doceat rem ita esse traditā p ipsum vel antecessores suos, nisi ostendat q tenēs talē habuerit ingressū, & p tales, sicut ipse dicit. Itē non sufficit ita pponere et fundare intensionē suā, nisi propositā et fundatā pbaverit, cūm simplici voci alicujus non sit fides adhibenda, secundum¹ q pbatur in itinere episcopi Dunholm et M. de P. in cōm Eborū anno regni regis H. 3. de Aghevilda Murdac.

2. Constitutis igitur partibus in judicio, aut habet petens pbationē aut nō habet, vel non nisi sectā tantū, quæ nō inducit nisi tantū p̄sumptionē, et quæ nō sufficit, quia in cōtrariū admittit defēSIONē p legē. Si autē nullā ōnino habuerit pbationē p se, videtur q tenens nō habet necesse ei in aliquo respōdere ppter defectum pbationis, quia possit deficere pbatio licet nunquā deficiat jus, secundū² q pbatur in itinere episcopi Dunholm et Marī de Pateshul in comitatu Eborū año regis H. 3. de Reginaldo Murdaker. Et q cadit breve videtur, nisi sit qui sustineat, q de gratia justicie possit & debeat ei subveniri p juratā patriæ, sed cum

¹ "secundum quod" down to
"Murdac" omitted MS. Rawl. C.
160.

² "secundum quod" down to
"Murdaker" omitted MS. id.

CHAPTER II.

We have treated above the case when the claimant has propounded his declaration, and the tenant has been unwilling to except against his declaration, but has simply put himself upon a jury concerning entry. But now we must speak of the case, if the tenant wishes to except against the declaration, in the first place it is necessary that the claimant should set up a foundation for his declaration, to wit, that he should show that he is entitled to bring an action, because he himself delivered it for a term, or some ancestor whose heir he is. And it is not sufficient that he should show, that the estate was so delivered by himself, or by his ancestors, unless he can show that the tenant had such an entry and through such persons, as he himself says. Likewise it is not sufficient for him thus to propound and set up his declaration, unless he shall prove it when so propounded and set up, since faith is not to be given to the single voice of an individual, according to what is proved in the iter of the bishop of Durham and Martin de Pateshull in the county of York, in the third year of the reign of king Henry, concerning Aghevilda Murdac.

1.
Of the
answers
and ex-
ceptions of
the tenant
against the
claimant.

f. 320.

The parties therefore having appeared in court, the claimant has or has not his proof, or only a seet, which does not give rise to more than a presumption, and which is not sufficient, because it admits in contradiction a defence by law. But if he has no proof at all on his side, it seems that the tenant is not under the necessity of answering in any thing to him on account of his default of proof, because the proof may fail, although the right may never fail, according to what is proved in the iter of the bishop of Durham and Martin de Pateshull in the county of York, in the third year of king Henry, concerning Reginald Murdaker. And that the writ fails seems to be the case, unless there be some one to support it, which by the favour of the justiciary can and may be

2.
When the
parties
have ap-
peared in
court.

causæ cognitione, vel quia forte instrumenta pbationis deperdita sunt, vel quia illa ad pbationem suā faciendā ad manum non habuerit, vel sine difficultate habere non poterit. Quo casu dabitur alius dies, ut de termino Paschæ aīno regis Henrici decimo quarto in comitatu Dors. de Matilda quæ fuit uxor Stephani de Bosco &c. Si autē instrumentum pbationis ptulerit de termino et de dimissione, et ei contradicatur, pbetur veritas instrumenti per testes et per patriā, qua pbata, adhuc erit necesse probare ingressum et terminū pteritum, sed contra excipiat, alioquin inutilis erit actio. Si autē instrumentū ab initio cōcedatur, et tenens excipiat de feoffamento, ut si cōcedat quodd primò receperit ad terminum, et q infra terminum datum sit ei tenemētum in feodo. Si petens feoffamēto cōtradicat et chartæ, pcedet inquisitio de feoffamēto p testes et p patriā. Et quo casu si feoffamētum sufficiens sit et bonū, retinebit tenens, et sic terminabitur negotium. Si autē feoffamentū nullū, sic recuperabit petens sine aliquo regressu, quem tenens habere possit ad terminū, quia in eo, q se tenuerit ad feodū, tacitè termino renuntiavit. Si autem petens p se nullam habeat pbationem nisi simplex dictum, et simplicem vocem de dimissione et termino, et tenens ex abundanti (licet ad hoc non teneretur) pferat chartā de feoffamēto, quæ dedici non

Britton, v. ch. xvi. §1. potest, tenens in seysina sua remanebit: ut de ultimo itinere M. de P. in comitatu Suff. de Wilhelmo de Wanham et Matilda uxore ejus, nec etiam tenens sive petens audiendus esset, si se ponere vellet super patriam

done by the help of a jury, but with cognisance of the cause, either because by accident the instruments of proof have been lost, or because he may not have at hand or cannot without great difficulty procure the instruments to establish his proof. In which case another day will be allowed to him, as in Easter term in the fourteenth year of king Henry, in the county of Dorset, concerning Matilda, who had been the wife of Stephen de Bosco. But if he has produced an instrument in proof of the term and of the demise, and it be contradicted, let the truth of the instrument be proved by witnesses and the country, which having been proved it will still be necessary to prove the entry and the past term, but it may be excepted against it, otherwise the action will be useless. But if the instrument be admitted from the commencement, and the tenant except on the ground of a feoffment, as if he should concede that he received it at first for a term, and that within the term the tenement was granted to him in fee. If the claimant contradicts the feoffment and the charter, let an inquest proceed concerning the feoffment by witnesses and the country. And in which case if the feoffment be sufficient and good, the tenant will retain the tenement, and so the business will be terminated. But if the feoffment is null, the claimant will thereupon recover without any recourse that the tenant can have to the term, because inasmuch as he has clung to the fee, he has tacitly renounced the term. But if the claimant has by himself no other proof except his simple assertion and his single voice concerning the demise and term, and the tenant has superfluously (for he is not bound to this) produced a charter of feoffment, which cannot be gainsayed, the tenant will remain in his seysine: as in the last iter of Martin de Pateshull in the county of Suffolk, concerning William of Wanham and Matilda his wife, for neither the tenant nor the claimant would have to be heard, if he wished to put himself upon the

f. 320 b.

de ingressu suo, cū nullā habeat pro se præsumptionem, nec contra chartam (ut videtur) respondere poterit, quæ proponitur in modum exceptionis, cum actio sua non teneat super principali. Item esto quòd petens dicat quòd tenens non habeat ingressum nisi per A. et tenens respondeat et dicat quòd ingressum habeat per ipsum petentem, vel aliquem antecessorē suū qui dederint, recognoverint, vel remiserint per chartam suam, quæ probata hoc testetur. Si petens cūm ad chartam responderit illam concedat, et q̄ facta fuit, sed tali tempore quòd valere non debet, quia cognoscit chartam quocunque modo, & qualitercunq̄ chartam concesserit per consequens ingressum p̄ talem petentem, s. seipsum vel antecessorem suū qualitercunq̄, & non p̄ eum quem petens nominat in brevi suo, & ideo cadit actio, & tenens sine die, & petens sibi pquirat p̄ aliud b̄re: ut de itinere W. de Ralegh in coñ War̄ de Hugone de Cayel Marestorp.¹ Et cūm objectū fuerit feoffaīntum, & excipiatur contra chartam à petente, ubi p̄bationem habuerit de ingressu, vel saltem p̄sumptionem, & uterq̄ se posuerit in juratam, tunc fiat recognitio p̄ hæc verba. Ad recognoscendum videlicet si p̄dictus A. aliud jus, vel alium ingressum habuit in prædictam terram quàm p̄ p̄dictum B. qui terram illam ei dimisit ad terminū qui præteriit, vel si idem A. ingressum habuit in p̄dictam terrā p̄ eundem B. qui terram illam ei vendidit vel dedit in feodo p̄ chartā suam, ut idem A. dicit. Et unde etiam cognoscit q̄ prædictus B. terrā illam primò ei dimisit ad terminū, & durante termino illam ei dedit in feodo per chartā suam. Et ferè per eadem verba fieri poterit recognitio, si partes

¹ "Cayelmaresthorpe," MS. Rowl. C. 160.

country concerning his entry, when he has no presumption on his behalf, and cannot reply against the charter (as it seems), which is propounded in the manner of an exception, when his action does not hold upon the principal question. Likewise let it be that the claimant says that the tenant has no entry but through A., and the tenant replies and says that he has an entry through the claimant himself, or some of his ancestors, who granted, recognised, or remitted the tenement by their charter, which being proved bears witness of this. If the claimant, when he has replied to the charter, admits it and that it was executed, but at such a time that it ought not to be valid, because he acknowledges the charter in some way or other, and has admitted the charter somehow or other, and consequently ingress through so-and-so the claimant, to wit, himself, or his ancestor in some way or other, and not through him, whom the claimant names in his writ, and accordingly the action falls and the tenant is without a day, and the claimant should provide for himself by another writ, as in the iter of William de Raleigh in the county of Warwick, concerning Hugh de Cayel Marestorp. And when a feoffment has been objected, and an exception is raised against the charter by the claimant, when he has a proof concerning the entry or at least a presumption, and each has put himself upon a jury, then let a recognition be made through these words: "To recognise forsooth, if
 " the aforesaid A. had any other right or any other
 " entry into the aforesaid land than through the afore-
 " said B., who demised that land to him for a term which
 " has passed, or if the said A. had an entry into the
 " aforesaid land through the said B., who sold that land
 " to him or granted it in fee by his charter as the said
 " A. says." And whereupon he acknowledges that the aforesaid B. first demised that land to him for a term, and during that term granted it to him in fee by his charter. And the recognition may be made in nearly

f. 320 b.

absq̃ p̃batione vel instrumentorum exhibitione se gratis posuerint in juratam. Item excipi poterit contra petētem, q̃ alius majus jus habet quam ille qui petit. Item q̃ alius dimisit & non ille de quo fit mentio in b̃ri p̃ errorem. Item q̃ terminus non præterierit, & si terminus præterierit quantū ad primum instrumentum & primam conventionem, progatus fuit terminus p̃ aliam conventionem & p̃ aliud instrumentum, q̃ quidem statim exhibeat. Item excipere poterit contra petentem q̃ terminus excedit tempus assisæ mortis antecessoris, & ideo q̃ deficit probatio. Et infinitæ sunt exceptiones de quibus non est necesse hīc facere mentionē, quia de illis inferiūs plenius dicendum erit.

3. Cū autē tenens excipiat, & dicat q̃ non habet ingressum p̃ talem, de quo breve loquitur, immo p̃ alium talē, si petens hoc dedicere non possit, vel si negaverit & recognitum sit p̃ juratam q̃ sic cadit breve, quia non convenit veritati. Sed reverā bene poterit tenens (si voluerit) renunciare illi exceptioni contra breve, & sustinere breve (& hoc erit potius ad dānum suum quā ad cōmodum) & warantum vocare aliū quā illum, qui in brevi nominatur. Sed ad hoc arctari non poterit, nisi velit gratis renunciare exceptioni. Et q̃ ita facere possit si velit, p̃batur in rotulo de termino. Volunt tamen quidam arctare tenentem, q̃ ipse alium talem quem nominavit, vocet ad warantum, quod non est concedendum, quia si teneretur talem vocare ad warantum præcisè & warantizaret, ita possit ille aliū vocare, & ille alius tertiū, & sic in infinitū usquē ad mille. Et si sic, non limitaretur breve de

De exceptione contra ingressum, et quod tenens poterit renunciare exceptioni, si voluerit, et vocare alium quam eum, qui in brevi nominatur, warantum, licet hoc sit contra seipsum.

the same words, if the parties without any proof or the exhibition of instruments put themselves gratuitously upon a jury. Likewise it may be excepted against a claimant, that another person has more right than he who claims. Likewise that another person demised the tenement, and not he of whom mention is made in the writ by error. Likewise that the term has not passed, and if the term has passed as far as regards the first instrument and the first convention, the term was prorogued by another convention and by another instrument, which he should forthwith exhibit. Likewise he may except against a claimant that the term exceeds the time of an assise of mortdancester, and on that ground, that the proof fails. And there are infinite exceptions, concerning which it is not necessary here to make mention, because we shall have to speak about them more fully below.

But when the tenant excepts, and says that he has not an entry through so-and-so, of whom the writ speaks, nay, by a certain other person, if the claimant cannot gainsay this, or if he has denied it, and it has been recognised by a jury, then the writ falls, because it does not agree with the truth. But in truth the tenant well may, if he wishes, renounce that exception against the writ, and sustain the writ (and this will be rather for his loss than for his advantage), and may call a warrantor other than him who is named in the writ. But he cannot be constrained to this, unless he wishes gratuitously. And that he may do this if he will, is proved in the roll of the term. Some persons however desire to constrain the tenant, that he should call such other person whom he has named as a warrantor, which is not to be allowed, because if he were bound to call such a warrantor precisely, and he should warrant, so he might call a second one, and the said second one might call a third, and so without end up to a thousand. And if so, the writ of entry would not be limited within

3.
Of an exception against an entry and that the tenant may renounce an exception, if he wishes, and call another person than him who is named in the writ, as a warrantor, although this may be against himself.

f. 321.

ingressu infra suos limites & suos gradus: nec habet tenens necesse vocare talem ad warantum, cùm cadit breve per exceptionem, eò quòd ingressum non habuit per talem in brevi nominatum, nec egeat quòd alius non defendat in sua possessione, cùm sufficiat ei sua propria exceptio ad defensionem. Et quòd cadere debet in hoc casu breve, inveniri poterit de termino Paschæ anno regis Henrici septimo in comitatu Buck. de Guidone de Windeslore.¹ Et ad hoc facit de termino eodē in comitatu Kanc. de Alicia quæ fuit uxor Richardi, & in aliis multis locis. Sed cùm ingressus sit talis, sicut petens dicit, bene poterit tenens (cùm cognoverit ingressum) vocare warantum suum, per quem ipse ingressum habuerit, & quilibet suum usquē ad quartum gradum, & non ultra, dum tamen tenens ipse tenuerit ad vitam ut liberum tenementum, vel in feodo sibi & hæredibus suis, vel ad feodi firmam, vel hujusmodi. Revera si impetratum fuerit super firmarium, non cadit breve, quia ipse poterit vocare warrantum, quasi non,² sic amitteret usufructuarius usumfructum, quod esset iniquum, cùm tantundem juris habet in usufructu quantum proprietarius in libero tenemento, & cùm veniat breve, super eum vocet warantum, & si fuerit defensus, retinebit usumfructum. Si autem non, habebit regressum versus suum warrantum de usufructu, & warrantus suus si ulteriùs vocaverit & fuerit ei warrantizatum de libero tenemento, & de exchange. Si autem ad terminum annorum, credo aliud est dicendum, cùm ipse non teneat in dominico tenementum & secundum quod petitur, nisi tantum usum fructum, & multo minus si teneat de anno in annum. Item quæritur si petatur versus abbatem aliquem vel priorem vel alium religiosum expresso proprio nomine vel non expresso, & ubi dicatur & in quā non habuit

¹ "Windelesore," MS. Rawl. C. 160. | ² "quod si non, sic amitteret," id.

its bounds and its degrees, nor is the tenant under the necessity of calling so-and-so, as a warrantor, since the writ abates through the exception, inasmuch as he had not an entry through so-and-so as named in the writ, nor would he want that another should defend him in his possession, since his own exception would suffice for his defence. And that the writ ought to abate in this case may be found in Easter term in the seventh year of king Henry, in the county of Bucks, concerning Guy de Windeslore. And for this makes the case of Alicia, who was the wife of Richard, in the same term in the county of Kent, and many other cases. But when the entry is such as the claimant says, the tenant (when he has acknowledged the entry) may well call his warrantor, through whom he had his entry, and each his own up to the fourth degree, and not beyond, provided, however, the tenant himself has held for life as a free tenement, or in fee for himself and his heirs, or as a fee-farm or such like. In truth, if it has been sued out against the farmer, the writ does not abate, because he may call a warrantor, as if not, so the usufructuary might lose the usufruct, which would be inequitable, since he has as much right in the usufruct as the proprietor in the free tenement, and when the writ comes, let him call a warrantor upon it, and if it be defended, he will retain the usufruct. But if not, he will have recourse against his warrantor concerning the usufruct, and his warrantor if he has further called a warrantor, and he has had his free tenement warranted, and concerning compensation for it. But if for a term of years, I believe something else is to be said, since he does not hold the free tenement in domain and according to what is claimed, except only the usufruct, and much less if he holds from year to year. Likewise it is questioned, if a claim be made against an abbot or a prior or some other religious person with his proper name expressed or not expressed, and where it is said and "into which he had

f. 321.

ingressum nisi per talem abbatem prædecessorem suum, & cadat breve si plures abbates medii intervenerint? & an faciunt gradum de abbate in abbatem sicut de hærede in hæredem? & videtur quòd non magis, quàm in cōputatione descensus, quia etsi alternetur persona, non propter hoc alternatur dignitas, sed semper manet.

CAP. III.

1.
Breve, si
heres petat
quod
antecessor
dimisit ad
terminum.

Dictum est supra, si ille petat qui dimisit, nunc autem dicetur si hæres petat quod antecessor dimisit ad terminum. Forma brevis talis est. Rex vicecomiti salutem. Præcipe tali, quòd justè & sine dilatione reddat tali, tantum terræ cum pertinentiis in tali villa quod clamat esse jus & hæreditatem suam, & in quod prædictus talis non habet ingressum nisi per talem, cui talis pater vel mater, frater vel soror, avus vel avia, avunculus vel amita, consanguineus vel consanguinea, sive prædecessor prædicti talis (cujus hæres ipse est) illud dimisit ad terminum qui præteriit (ut dicit). Et nisi fecerit, et idem talis fecerit te securum de clamore suo prosequendo, tunc summoneas per bonos summonitores præfatum talem, quod sit coram justitiariis nostris ad primam assisam cum in illas venerint, ostensurus quare non fecerit, et habeas ibi summonitores et hoc breve. Teste, &c.

f. 321 b.

CAP. IV.

1.
Breve, si
vir dona-
tionem
fecerit de
hæreditate.

Si quis donationē fecerit de hæreditate uxoris, quæ ei in vita sua contradicere nō potuit, tūc post mortē viri cōsultitur ei p tale breve. Rex vic. salutē. Præ-

not an "entry except through such an abbot his predeces-
sor," and the writ should abate, if several intermediate
abbots have intervened? and whether they make a step
from abbot to abbot, as from heir to heir? and it seems
not more so, than in a computation of descent, because
although the person be alternated, the dignity is not
thereupon alternated, but it remains always.

CHAPTER III.

We have discussed above, if he claims, who has de-
mised: now then it shall be discussed, if the heir claims
what his ancestor has demised for a term. The form of
the writ is of this kind. The king to the viscount
greeting. Enjoin so-and-so, that justly and without
delay he restore to such an one so much land with its
appurtenances in such a vill, which he claims to be his
right and his inheritance, and into which the aforesaid
so-and-so has not entry except through a certain person,
to whom such an one's father or mother, brother or
sister, grandfather or grandmother, uncle or aunt, cousin-
male or cousin-female, or the ancestor of the aforesaid
such an one (whose heir he himself is) demised it for a
term, which has passed as he says. And unless he does
so, and if the said claimant has given you security to
prosecute his claim, then summon by good summoners
so-and-so aforesaid, that he appear before our justiciaries
at the first assise, when they have come into those parts,
in order to show cause wherefore he has not done so,
and produce there the summoners and this writ. Wit-
ness, &c.

1.
A writ, if
an heir
claims
what his
ancestor
demised
for a term.

CHAPTER IV.

If any one has made a grant of the inheritance of his
wife, who could not contradict it during his lifetime,
then provision is made for her after his death by a writ
of this kind. The king to the viscount greeting. En-

f. 321 b.

1.
A writ, if
a husband
has made
a grant of
the inheri-

uxoris, cui
ipsa in vita
sua contra-
dicere non
potuit.

Britton, v.
ch. x. § 13.

cipe tali q̄ juste &c. reddat tali quæ fuit uxor talis, tātū terræ cū ptinentiis in tali villa, q̄ clamat esse jus & hæreditatē suā vel maritagiū suū, & in q̄ p̄dictus talis non habet ingressum nisi p̄ p̄dictū talē quondā virū suum, qui illud ei dimisit, cui ipsa in vita sua cōtradicare non potuit (ut dicit), & nisi fecerit, & idē talis fecerit te securū &c., ut supra. Ad quē ingressum tenens poterit multipliciter respondere, secundū q̄ superiūs dictum est. Et etiam poterit defendere ingressum p̄ p̄dictum virum, & dicere quod habuit ingressum per p̄dictam mulierem, antequam esset desponsata tali viro, vel post mortē viri sui, & hoc pbare per instrumenta, & per testes simul cum patria, vel ex toto se ponere in juratam, & secundum talia verba formari poterit inquisitio. Item concedere possit quòd habuit ingressum per talem virum suum, & dicere quòd p̄dicta talis postea in legia viduitate sua confirmavit donum viri sui, vel q̄ in legia viduitate sua remisit ei totum jus & clamorem suum. Item ad hoc q̄ dicit (cui in vita contradicere non potuit) respondere poterit q̄ p̄dicta mulier personaliter fuit in curia dñi regis cum viro suo, & donū illud liberaliter & bona voluntate sua sine aliqua coactione concessit, & ratum habuit, q̄ quidē terminari poterit per inspectionem rotulorum, q̄ quidem non esset si hoc fieret extra curiam regiam, quia ibi fieri possunt coactiones contra voluntatē, q̄ quidem non fieret in curia domini regis. Ibi enim nulla violentia infertur, nec metus incutitur, nec est verisimile aliquem in curia domini regis per violentiā cōpulsum esse ad aliquid contra voluntatem faciendum, vel non faciendum, cū ibi tutum invocari possit auxilium. Item distinguendum est in hoc casu, utrum

join so-and-so that justly, &c. he restore to such an one, ^{tance of his} who ^{wife, which} was the wife of such an one, so much land with its ^{she could} appurtenances in such a vill, which she claims to be her ^{not con-} right and her inheritance or her marriage portion, and ^{tradict} into which so-and-so aforesaid has not had any entry ^{during his} except through such an one aforesaid formerly her husband, who demised it to him, which she herself could not ^{lifetime.} contradict during his lifetime, as she says, and unless he has done so and the said so-and-so has given you security &c. as above. To which entry the tenant may answer in manifold ways, according to what has been said above. And he even may contest the entry through the husband aforesaid, and say that he had an entry through the aforesaid woman before she was espoused to her said husband, or after the death of her husband, and may prove it by instruments and by witnesses together with the country, or put himself on the whole case upon a jury, and the inquest may be shaped according to such words. Likewise he may admit that he had an entry through such person her husband, and may say, that the aforesaid woman afterwards during her free widowhood confirmed the gift of her husband, or that in her free widowhood she remitted to him all her right and her claim. Likewise to this which she says, (which she could not contradict during his lifetime,) he may answer that the aforesaid woman was personally in the court of the lord the king with her husband, and allowed the grant freely and of good will without any compulsion and ratified it, which may be determined by an inspection of the Rolls, which would not be, if this had been done outside the court of the king, because there might be there enforced compulsions against the will of a party, which could not be done in the court of the king. For there no violence is offered, nor fear caused, nor is it likely that any one in the court of the king has been compelled by violence to do anything, or not to do it, against his will, since there a safe help may be invoked. Likewise a

donatio facta fuerit per virum ad hoc q̄ revocetur, vel tenet ex causa honesta & necessaria, & communi utilitate tam viri quám uxoris, vel ex causa voluntaria tantúm. Si autem ex causa honesta, ut si communi filio fiat donatio, vel in maritagium cum filia, hoc erat in causa honesta, & ideo tenenda ubicunquè facta. Si autem tantúm ex causa voluntaria, & non utili, tunc aut intervenerit coactio vel non. Si autem coactio intervenerit, quod de facili perpendi poterit per vultū & per gestū mulieris, quamvis in curia dñi regis nunquam fiat inde cyrographum, sed vix inrotulatio concedatur. Et notādum, q̄ inrotulatio per se sine cyrographo nunquam tollet actionem uxoris post mortem viri sui, & si uxor præmoriatur, hæres eorum cōmunis nunquā recuperabit per aliquam actionē, cūm warrantizare teneatur ut hæres patris, propter homagium & servicium q̄ ei accidit ex feoffamento patris, cōtra donum patris q̄ mater in vita sua revocavit, ne sit ejusdem tenementi dominus & tenens. Si autem, cūm mater peteret, vocaretur ad warrantum & amitteret, ita irritum esset donum patris, & dissolveretur homagium inter ipsum & feoffatum à patre suo, & ipse teneretur ad eschambium de hæreditate patris, & cū mater obtinuerit, & descēdat materna hæreditas ad ipsū, nunqm̄ reviviscit homagium, q̄ p̄ matrē, quæ per juditiū obtinuit, semel est extinctum. Si autem sic feoffaverit vir tenendum de dñis capitalibus, vel si aliū habuerit antenatum de alia uxore, aliud erit, quia tūc nō erit

f. 322.

distinction must be made in this case, whether the grant has been made by the husband with the object of its being revoked, or it holds from an honest and necessary cause and the common interest of the husband and the wife, or only from a voluntary cause. But if from an honest cause, as if a donation is made to a common son, or a marriage portion is given with a daughter, this was in an honest cause, and is therefore to be upheld where-soever made. But if only from a voluntary cause and not for their interest, then either compulsion will have intervened or not. But if compulsion has intervened, which may easily be discovered from the look and the gesture of the woman, although in the court of the lord the king, a chirograph would never be made thereof, and scarce an enrolment would be allowed. And it is to be noted that an enrolment by itself without a chirograph will never take away a right of action on the part of a wife after the death of her husband, and if the wife predeceases him, their common heir will never recover by any action, since he is bound to warrant as the heir of his father, on account of the homage and service which accrue to him from the feoffment of his father, against the grant of his father, which his mother has revoked during her lifetime, lest he should be the lord and the tenant of the same tenement. But if, when his mother was the claimant, he has been called to warrant and he has lost, the grant of his father would thus be void, and the homage would be dissolved between him and the feoffee of his father, and he himself would be bound to make compensation from the inheritance of his father, and when his mother has prevailed, and his maternal inheritance has descended to him, the homage never revives, which has been once extinguished through his mother, who has prevailed by a judgment. But if the husband has so enfeoffed it to be held of the chief lords, or if he has had another earlier-born son by another wife, it will be otherwise, because in that case the com-

f. 322.

Q 6366.

C

filius communis hæres patris, sed tantum matris: & sic habebit repetitionem, quia ad warrantum non tenetur: sicut de itinere in comitatu Eborū. Si autē coactio non intervenerit sed mulier hoc affectaverit, q̄ de facili ppendi poterit per gestū & per vultum, concedatur fieri cyrographū. Mulier enim aliquando plus amat donatoriū quàm seipsam vel puerū suum, & bona cautela est in irrotulatione facere mentionem de voluntate mulieris, secundū quod fuerit gratuita vel coacta. Sed ad hoc quòd tale breve cōpetat vel non de donatione viri, refert utrum vir præmoriatur vel uxor: si autem uxor præmoriatur, tale breve non competit communibus hæreditibus uxoris & viri, quia si eis competeret tale breve, ita posset impugnare & revocare factum patris, q̄ teneretur defendere, cū sit hæres patris ex tali donatione. Sed videtur quòd hoc non sufficit dicere, quia factum patris non tenetur defendere de hæreditate matris, cū ex parte patris nulla hæreditas ei descendat, & cū non sit hæres patris sed filius tantū, & hæres matris propter hæreditatem descendentem ex parte matris, & cū hæres dicatur ab hæreditate & non e converso. Si autem aliqua hæreditas descendat à patre, factum patris tenetur warrantizare & defendere, quatenus hæreditas patria se extendat & non ultra, si mater obtinuerit, sive talis progenitus fuerit ex primo viro vel secundo. Et unde videtur quòd tale breve competat hæredi, & secundum quod videri poterit in itinere episcopi Dunholñ & Martini de Pateshul anno regis Henrici tertio in comitatu Eborum in fine rotuli, ubi continentur verba ista: &

mon son will not be the heir of the father, but only of the mother, and so he will have a right of reclaiming it, because he is not bound to a warranty, as in the iter in the county of York. But if compulsion has not intervened, but the woman has affected it, which may easily be discovered by her gesture and her look, let it be allowed for a chirograph to be made. For a woman sometimes loves a donatory more than herself or her son, and it is a good precaution in the enrolment to make mention of the will of the woman, according as it has been voluntary or compulsory. But in order that such a writ should be suitable or not concerning the grant of the husband, it is important whether the husband or the wife has died first: but if the wife dies first, such a writ is not suitable for the common heir of the wife and husband, because if he were entitled to such a writ he would thus be able to impugn and revoke the act of his father, which he would be bound to maintain, since he is the heir of his father from such a grant. But it seems that it is not sufficient to say this, because he is not bound to defend the act of his father concerning the inheritance of his mother, since on the part of his father no inheritance descends to him, and since he is not the heir of his father but only the son, and the heir of his mother on account of the inheritance descending to him on the part of his mother, and since he is called heir from the inheritance, and not conversely. But if any inheritance descends from the father, he is bound to warrant and to maintain the act of his father, as far as the inheritance of the father extends and no further, if his mother has prevailed, whether such son has been begotten by the first husband or by the second. And hence it seems, that the heir is entitled to such a writ, and according to what may be seen in the iter of the bishop of Durham and Martin de Pateshull in the third year of the reign of king Henry in the county of York at the end of the roll, where these words are contained, “and into which

in quam talis non habet ingressum nisi per talem quondam virum ipsius talis uxoris matris ipsius talis, cujus hæres ipse est, qui illam ei vendidit in vita sua, cui prædicta talis in vita sua contradicere non potuit.

2. Sed videtur e contra, quòd ad ipsum non pertineat tale breve, ex quo mater in vita sua donum non revocavit, & ideo dissimulando injuriam concessit, nec videtur hæredi injuriatum, ex quo antecessor injuriam dissimulando sustinuit: secundum illud quod non potest nocere hæredi quod antecessori non nocuit. Et unde videndum utrum uxor diu vixit post mortem viri vel cito obiit, vel in vita viri. Sed revera (quicquid dicatur) non competit hæredi tale breve, sed nec breve ad terminum qui præteriit, quia replicatio quæ competeret mulieri si viveret, non competit hæredi, sicut videri poterit apertè: ut si ipsa dum viveret peteret, excipi poterit contra ipsam de donatione, contra quam replicare posset quòd viro suo contradicere non potuit, & ista replicatio non jacet in ore hæredis, quia cùm dicat, mater mea contradicere non potuit, per hoc ostendit quod replicatio illa competit matri & non ei, nec congruè dicere posset hæres, quòd oportuit matrem facere voluntatem domini sui, nec constare poterit hæredi de voluntate matris, quæ fortè si viveret nunquam donum illud revocaret. Revera, licet nullam habeat hæreditatē

f. 322 b. ex parte patris, & sic non hæres (ut videtur), petere non potest, cùm teneatur warrantizare, licet mater petere posset, warrantizare tenetur ut hæres, quia in hoc erit hæres patris ppter homagiū et serviitiū q̄ ei

“ he had no entry except through such a one formerly
 “ the husband of the said wife, the mother of him whose
 “ heir he himself is, who sold it to him during his life-
 “ time, whom his said wife could not contradict during
 “ his lifetime.”

But it appears on the contrary, that such a writ does not pertain to him, since his mother in her lifetime did not revoke the grant, and therefore by dissimulating allowed the injury ; nor does injury appear to have been done to the heir, since the ancestor supported the injury by dissimulating: according to that saying, that what has not been hurtful to an ancestor cannot be hurtful to his heir. And hence it is to be seen, whether the wife lived a long time after the death of her husband, or died soon after it, or in the lifetime of her husband. But (whatever may be said), such a writ is not suitable to the heir, nor again a writ for the term which has passed, because the replication which would be suitable to the woman, if she were alive, is not suitable to the heir, as may be seen clearly, as if she claimed whilst she was alive, an exception might be raised against her concerning the grant, against which she might reply that she could not contradict her husband, and that replication does not lie in the mouth of the heir, because when he says, my mother could not contradict, he thereby shows that that replication is suitable to his mother and not to him ; nor can the heir congruously say that it was incumbent upon his mother to execute the will of her lord ; nor can the heir be certain concerning the will of his mother, who, perhaps, if she were alive, would never revoke that grant. In truth, although he has no inheritance on the part of his father, and so he is not heir as it seems, he cannot claim, since he would be bound to warrant, although his mother might claim, he is bound to warrant as the heir of his father, for he will be the heir of his father in this respect, on account of the

2.
 A writ, if
 the heir has
 been by
 another
 husband
 and if the
 husband
 has had an
 heir by
 another
 wife.

f. 322 b.

descendere debet de seysina patris, licet feoffamētum sit factū de hæreditate matris, poterit enim quis alienam rem dare tenendam de se & hæredibus suis, & ratione talis feoffamenti erit filius hæres suus, licet ei alia hæreditas non descendat, sed ad escābium non teneatur, nisi de eo quæ ei descēdit de hæreditate patris. Sed aliud erit, si pater dederit tenendū de aliis qm de hæredibus suis, sicut de capitalibus dñis vel aliis. Et quid si dicat de uxore & hæredibus suis? hoc non obligat uxorem nec hæredes suos. Sed quid si uxor petierit & hæres communis vocetur ad warrantum? tenetur warrantizare prædicta ratione, & ipsa recuperabit, & hæres cōmunis, cūm nihil habeat de hæreditate paterna, quoad escambiū non tenebitur, licet teneatur ad warrantiam, & post mortem matris succedet ei in terrā illam, & de ea non tenetur facere eschābium, et unde videtur (quicquid alii dicant) q si mater obierit ante virum suum, & hæres uxoris de eodem viro petat, q cūm ad warrantiam teneretur, repelli deberet ab agendo q non recuperet, licet non teneatur ad eschambiū de hæreditate matris. Revera, si neq, pater neq, mater alium habuerint hæredem, ut si pater de alia uxore filium non habuerit, vel uxor filium de alio viro & ipsi duo unicum hæredē, talis hæres revocare non poterit donū patris de hæreditate matris, cum ideo teneatur istum warrantizare ut hæres ratione prædicta. Sed mater hoc facere poterit si virum supervixerit, & sic poterit ad communem hæredem res sic data descendere cūm per factum matris adnihiletur donum patris, q per communem hæredē fieri non poterit. Si autem communem hæredē non habuerit,¹ bene poterit hæres matris donū tale repetere, & hæres

¹ "habuerint," MS. Rawl. C. 160.

homage and service, which ought to descend to him on account of the seysine of his father, although a feoffment has been made of the inheritance of his mother, for a person may grant another person's estate to be held of him and his heirs, and by reason of such a feoffment the son will be his heir, although the other inheritance does not descend to him, but he is not bound to make compensation, except out of that which descends to him from the inheritance of his father. But it will be otherwise if his father has granted it to be held of others than his heirs, as of chief lords or others. And what if he shall say of his wife and her heirs? This does not oblige his wife nor her heirs. But what if the wife has claimed, and the common heir is called as a warrantor? He is bound to warrant for the reason alleged, and she shall recover, and the common heir, as he has nothing of his paternal inheritance, will not be bound to make compensation, although he is bound to a warranty, and after the death of his mother he shall succeed to her in that land, and he shall not be bound to make compensation from it, and hence it seems (whatever others say) that if the mother has died before her husband, and the heir of the wife from the same husband claims, that, since he is bound to a warranty, he ought to be repelled from proceeding so that he should not recover; although he is not bound to make compensation from the inheritance of his mother. In truth, if neither the father nor the mother has any other heir, as for instance, if the father has not a son by another wife, or the wife a son by another husband, and both of them only a single heir, such an heir cannot revoke the grant of his father from the inheritance of his mother, since he is expressly bound to warrant it as their heir for the reason alleged. But the mother may do this, if she has survived her husband, and the estate so granted may descend to the common heir, since the grant of the father is annihilated by the act of the mother, which could not be effected by the common heir. But if they have not had a common heir, the heir of the mother

patris tenebitur aliunde ad warrantiam & escambium, & non hæres matris, & hac ratione habebit actionem post mortem matris.

CAP. V.

1. Si forte quis ingressū habuerit p secundū virū de terra, quā uxor habuit in dotē de dono primi viri sui, tūc fiat tale breve. Rex vic. salutē. Præcipe tali q justē &c. reddat tali tantū terræ cū ptinentiis in tali villa, qd' clamat esse rationabilē dotē suā, ut¹ de rationabili dote sua, quā habuit de dono talis primi viri sui, & q² p̄dictus talis nō habet ingressū nisi p talē secundum virū suū, qui illud ei dimisit, cui ipsa in vita sua contradicere non potuit (ut dicit) & nisi fecerit &c. ut supra. Et qualiter respondere debeat & negotium terminari, satis videri poterit superius per exemplum.

2. Si vir dotem uxoris alienaverit quam habuit de dono alterius viri, & quæ post mortem uxoris sui reverti deberet ad hæredes primi viri, consulitur hæredi per tale breve. Rex vic. salutem. Præcipe tali quodd justē &c. reddat tali tantū terræ cum pertinentiis &c., & in q idem talis non habet ingressum nisi per talem, qui illud ei dimisit, & qui illud tenuit in dotem talis uxoris suæ de dono talis quondam viri sui, patris vel fratris, avi vel avunculi, vel consanguinei sive antecessoris prædicti talis cujus hæres ipse est ut dicit. Et nisi fecerit &c. ut supra.

3. Item si hæres petat dotem alienatam per ipsam uxorem, tunc sic. Et in q prædictus talis non habet

¹ "vel," MS. Rawl. C. 160.

| ² "in quod," MS. id.

may well be able to claim back such a grant, and the heir of the father will be bound from other sources, to make warranty and compensation, and not the heir of the mother, and for this reason he will have an action after the death of his mother.

CHAPTER V.

If by chance a person has had an entry by a second husband into land, which the wife had as dower by the grant of her first husband, then let a writ of this kind issue. The king to the viscount greeting. Enjoin so-and-so that justly, &c., he restore to such an one so much land with its appurtenances in such a vill, which she claims to be her reasonable dower or of her reasonable dower, which she had from the grant of her first husband, and into which so-and-so aforesaid had not an entry except through such an one the second husband, who demised it to him, whom she could not contradict during his lifetime (as she says), and unless he shall do so, &c., as above. And in what way he ought to answer, and the business ought to be terminated, may be sufficiently seen above by an example.

1.
A writ, if dower has been alienated by a second husband.

f. 323.

If a husband has alienated the dower of his wife, which she had by the grant of another husband, and which after the death of the wife ought to revert to the heirs of the first husband, the heir is aided by the following writ. The king to the viscount greeting. Enjoin so-and-so, that justly &c. he restore to such an one so much land with its appurtenances &c., and into which the said so-and-so has no entry except through such an one, who demised it to him, and who held it as the dower of such an one his wife by the grant of such an one formerly her husband, the father or brother, grandfather or uncle or cousin or ancestor of such an one aforesaid, whose heir he is, as he says. And unless he do so &c. as above.

2.
A writ, if the husband has alienated dower.

Likewise if an heir claims dower which has been alienated by the wife herself, then thus. And into which

3.
A writ, to which an

hæredi, si
uxor dotem
alienaverit.

ingressū nisi per talem, quæ fuit uxor talis, quæ illud tenuit in dotem de dono p̃dicti talis quōdā viri sui, patris vel fratris &c. ut supra. Item si vir alienaverit dotem & uxor petat, tunc sic. Quam clamat esse dotem suam, quam habuit de dono talis primi viri sui, & in quam non habet ingressum nisi p̃ talē secundū virum suum, qui illam ei tradidit ad voluntatem suam, cui ipsa contradicere non potuit (ut dicit), & nisi fecerit &c. vel aliter: & in quā non habet ingressum nisi p̃ talem quondam virum suum qui illam ei vendidit, cui ipsa in vita sua contradicere non potuit &c.

4.
Item, si
uxor dotem
alienaverit.

Item si hæres petat quòd uxor dimisit q̃ tenuit nomine dotis, & tunc sic: Et in quam non habuit ingressum nisi p̃ talem, quæ fuit uxor talis avi prædicti talis, cujus hæres ipse est, & ex cujus dono ipsa talis illam tenuit in dotem de hæreditate p̃dicti talis avi ut dicit &c. vel aliter: in quam non habet ingressum nisi per C. cui D. avia ipsius C. (cujus hæres ipse est) illam vendidit, quæ illam tenuit in dotem (ut dicit) &c. vel aliter: Præcipe A. quòd justè &c. reddat B. & C. uxori ejus tantum terræ &c. quam clamat esse jus & hæreditatem ipsius C. & in quam idem A. non habet ingressum nisi per D. quondam uxorem ipsius A. cui C. quōdā uxor E. terrā illam dimisit, quæ non nisi dotem inde habuit ex dono prædicti E. quondam viri sui & avi ipsius C. cujus hæres ipse est, ut idem B. & C. dicunt. Si procurator sicut celerarius vel alius, abbas vel prior sine assensu capituli, vel episcopus, vel capitulum, sine consensu capituli, episcopi,

so-and-so aforesaid has no entry except through such an one, who was the wife of such an one, who held it in dower from the grant of such an one aforesaid formerly her husband, her father or brother &c., as above. Likewise if the husband has alienated the dower and the wife claims it, then thus. Which she claims to be her dower, which she had from the grant of such an one her first husband, and into which so-and-so had no entry except through such an one her second husband who conveyed it to him of his own will, which she could not contradict (as she says), and unless he does, &c. : or otherwise, and into which so-and-so has no entry except through such an one formerly her husband who conveyed it to him, whom she could not contradict during his lifetime, &c.

heir is entitled, if a wife has alienated her dower.

Likewise if an heir claims that the wife has demised what she held in the name of dower, and then thus : and into which he had no entry except through such an one who was the wife of so-and-so the grandfather of such an one aforesaid, whose heir he is, and from whose grant such an one herself held that land in dower of the inheritance of such grandfather aforesaid as he says &c. : or otherwise, and into which he had no entry except through C., to whom D. the grandmother of the said C. (whose heir he is) sold the land, who held it as dower (as he says) &c., or otherwise. Enjoin A. that justly &c. he restore to B. and C. his wife so much land &c., which he claims to be the right and inheritance of the said C., and into which the said A., has no entry except through D. formerly the wife of the said A. to whom C. formerly the wife of E. demised that land, which she only held as dower from the grant of the aforesaid E. formerly her husband and the grandfather of the said C. whose heir he is, as the said B. and C. say. If an agent such as a steward or other, an abbot or prior without the assent of the chapter, or a bishop or a chapter without the consent of the chapter or of the bishop, or of another person

4.
Likewise if a wife has alienated her dower.

vel alius cujus assensus fuerit necessarius, dimiserit sine assensu, tunc si abbas dimiserit, fiat tale breve.

5.
Breve, si
per abba-
tem sine
assensu
capituli.

Rex vicecomiti salutem. Præcipe tali, quòd justè &c. reddat tali abbati tantum terræ cum pertinentiis in tali villa, quod clamat esse jus ecclesiæ suæ, & in quod idem talis non habet ingressum nisi per talem, quondam abbatem de tali loco, qui illud ei dimisit sine assensu capituli sui ut dicit &c. Et nisi fecerit &c.

6.
Breve, si
celerarius
vel procu-
rator.

Rex vicecomiti salutem. Præcipe tali, quòd juste &c. reddat tali abbati, tantum terræ cum pertinentiis in tali villa, quod clamat esse jus ecclesiæ suæ, & in quod prædictus talis non habet ingressum nisi per celerarium vel per procuratorem domus ipsius abbatis de tali loco, qui illud ei dimisit sine assensu ipsius abbatis (ut dicit), & nisi fecerit &c. Eadem forma erit, si canonicus dimiserit sine assensu episcopi. Item

f. 323 b.

si uxor dimiserit sine assensu & voluntate viri, tunc sic: Quam clamat esse jus & hæreditatem suam, vel jus & maritagium ipsius mulieris, vel quam clamat esse rationabilem dotem suam, vel de rationabili dote ipsius mulieris, quam habuit de dono talis quondam viri sui: & in quam prædictus talis non habet ingressum, nisi per prædictam talem mulierem, quæ illud ei dimisit sine assensu & voluntate prædicti talis quondam viri sui (ut dicit), et nisi fecerit &c. Item si ballivus dimiserit sine voluntate domini sui, tunc sic. Et in quam idem talis non habet ingressum, nisi per talem quondam ballivum suum de tali villa, qui illam ei dimisit sine voluntate ipsius talis, ut dicit: & nisi fecerit &c. Item si per ballivum domini regis dum aliquis fuerit in priona domini regis, tunc sic.

7.
Breve, si
per balli-
vum contra

Rex vicecomiti salutem. Præcipe tali quòd juste &c. reddat tali tantum terræ cum pertinentiis in tali villa, quod clamat esse jus & hæreditatem suam, & in quod

whose assent has been necessary, has demised without that assent, then if the abbot has demised, let a writ issue of this kind.

The king to the viscount greeting. Enjoin so-and-so that he justly &c. restore to such an abbot so much land with its appurtenances in such a vill, which he claims to be the right of his church, and into which so-and-so aforesaid has no entry except through so-and-so, formerly abbot of such a place, who demised it to him without the assent of his chapter, as he says &c. and unless he do so &c.

5.
A writ if
by an
abbot
without the
assent of
the chapter.

The king to the viscount greeting. Enjoin so-and-so that justly &c. he restore to such an abbot, so much land with its appurtenances in such a vill, which he claims to be the right of his church, and into which so-and-so aforesaid has no entry except through the steward or through the agent of the house of the said abbot of such a place, who has demised it to him without the assent of the said abbot (as he says), and unless he do so &c. The same form shall be used, if a canon has demised without the assent of the bishop. Likewise if a wife has demised without the assent of her husband, then thus : which he claims to be his right and his inheritance, or his right and the marriage portion of his wife, or which he claims to be her reasonable dower, or of the reasonable dower of his wife, which she had from the grant of so-and-so her former husband, and into which such an one aforesaid had no entry except through the aforesaid woman, without the assent and will of her former husband aforesaid (as he says), and unless he do so &c. Likewise if though the bailiff of the lord the king, whilst some one was in the prison of the lord the king, then thus.

6.
A writ, if a
steward
or an
agent.

f. 324b.

The king to the viscount greeting. Enjoin such an one that justly &c. he restore to so-and-so, so much land with its appurtenances in such a vill, which he claims to

A writ, if
through a
bailiff

voluntatem
domini. prædictus talis non habet ingressum nisi per talem quondam ballivum nostrum, qui illud ei dimisit, dum idem talis fuit in prisa nostra, & terra sua in manu nostra &c., ut dicit, et nisi fecerit &c. Item si quis per eum qui feloniam fecerit, et tunc si post feloniam factam convictus sit, competit domino suo de quo tenuit tale breve ad recuperandam eschaetam suam.

8. Rex vicecomiti salutem. Præcipe A. quòd juste &c. reddat B. tantum terræ cum pertinentiis &c., in quam idem A. non habet ingressum nisi per C. de N. qui eandem terram tenuit de prædicto B. et quæ terra esse debet eschaeta ipsius B. propter feloniam, de qua idem B. in curia nostra coram nobis vel justiciariis nostris talibus convictus fuit et damnatus, et quam terram idem C. dimisit prædictæ A. postquam fecerat prædictam feloniam, ut idem B. dicit, et nisi fecerit &c. ut supra. Item si per eum qui tenuerit in villenagio habuit quis ingressum, tunc consulitur domino per tale breve.

9. Rex vicecomiti salutem. Præcipe tali &c. quòd reddat tali tantum terre cum pertinentiis in tali villa, in quod prædictus talis non habet ingressum nisi per talem, qui illud tenuit de prædicto tali in villenagio, ut dicit &c., et nisi fecerit, summoneas &c. ut supra. Item si quis per eum ingressum habuerit, qui non fuerit compos sui, nec sanæ mentis, et tunc sic.

10. Rex vicecomiti salutem. Præcipe tali, quòd juste &c. et in quod idem talis non habet ingressum nisi per talem patrem, vel alium antecessorem prædicti talis, cujus hæres ipse est, qui illud ei dimisit dum non fuit compos mentis suæ, vel dum non fuit compos sui, nec sanæ mentis (ut dicit). Et nisi fecerit &c. ut supra. Item si quis per eum qui non tenuerit nisi

be his right and inheritance, and into which such an one ^{against the} aforesaid has no entry except through such an one ^{will of} formerly our bailiff, who demised it to him, whilst so-and- ^{his lord.} so was in our prison, and his land was in our hand &c., as he says. And unless he do so &c. Likewise if any one through him, who has committed a felony and then has been convicted after the commission of the felony, his lord from whom he held is entitled to such a writ to recover his escheat.

The king to the viscount greeting. Enjoin A. that ^{8.} justly &c. he restore to B. so much land with its appurtenances &c., into which the said A. has no entry except ^{A writ, if a felon has alienated after the commission of the felony.} through C. de N., who held the same land from the aforesaid B., and which land ought to be an escheat of the said B. on account of a felony, of which the said B. was convicted and condemned in our court before us or our justiciaries, and which land the said C. demised to the aforesaid A. after he had committed the said felony, as the said B. says, and unless he do so &c. as above. Likewise if a person has an entry through him who held in villenage, then the lord is aided through a writ of this kind.

The king to the viscount greeting. Enjoin so-and-so, ^{9.} &c. that he restore to such an one so much land with its appurtenances in such a vill, into which so-and-so aforesaid has no entry except through such an one, who held ^{A writ, if a villein has alienated what he held in villenage.} it from such an one aforesaid in villenage, as he says &c., and unless he do so, summon &c. as above. Likewise if a person has an entry through him, who was not in possession of his faculties, nor of sound mind, and then thus.

The king to the viscount greeting. Enjoin so-and-so ^{10.} that justly &c., and into which the said so-and-so had ^{A writ, if through him, who was not of sound mind.} no entry except through such a father or another ancestor of the said so-and-so, whose heir he is, who demised it to him when he was not in possession of his faculties, nor of sound mind (as he says). And unless he do so &c. as above. Likewise if anyone (had entry) through

ad vitam suam quacunque ratione, sive nomine dotis, sive per legem Angliæ, sive per finem factum, et tunc sic.

11.
De ingressu per eum, qui non tenuit nisi ad vitam quacunque ratione, et cum post mortem reverti debet.

f. 324.

Rex vicecomiti salutem. Præcipe tali, quòd juste &c. et in quam idem talis non habet ingressum, nisi per talem, post mortem cujus prædicta terra reverti debeat ad prædictum talem, per finem factum in curia domini regis Johannis¹ regis patris nostri, vel in curia nostra coram justiciariis nostris, apud talem locum, inter talem patrem prædicti talis (cujus heres ipse est) petentem, et prædictum talem tenentem de tanto terræ cū pertinentiis in tali villa: vel sic: In quam idem talis non habet ingressum nisi per talem, qui terram illam tenuit ad vitam suam per finem factum in curia nostra &c. inter ipsum talem petentem, et prædictum talem tenentem, per quem finem eadem terra reverti debuit ad prædictum talem petentem, post mortem ipsius tenentis (ut dicit), & unde queritur quòd ipse talis injustè ei deforceat, & nisi fecerit &c. ut supra. Si quis autem per intrusionem fuerit in seysina, et ille qui jus habet petat versus eum, tunc fiat ei breve in hac forma.

12.
De ingressu per intrusionem.

Rex vicecomiti salutem. Præcipe A. qui juste &c. reddat B. tantum terræ &c. quem idem B. clamat ut jus suum versus eum ex dono C. patris ipsius A. (cujus heres ipse est), et in quam idem A. non habet ingressum nisi per hoc, quod ipse se intrusit in terram illam post mortem D. matris ipsius A. qui terram illam recuperavit ut dotem suam versus prædictum B. in curia nostra coram &c. per judicium ejusdem curiæ nostræ, et quoniam injuste ei deforciat: et nisi fecerit &c. Tunc summoneas &c. vel aliter: quam B. clamat esse jus suum de dono C.

¹ "in curia domini Johannis," MS. Rawl. C. 160.

him who held it only for his life in some way or other, whether in the name of dower, or by the law of England, or through a fine levied, and then thus.

The king to the viscount greeting. Enjoin so-and-so, that justly &c., and into which so-and-so aforesaid had no entry except through such an one, after whose death the aforesaid land ought to revert to such an one aforesaid, after a fine made in the court of the lord the king John our father, or in our court before our justiciaries at such a place, between so-and-so the father of such an one aforesaid (whose heir he is), the claimant, and so-and-so aforesaid the tenant of so much land with its appurtenances in such a vill; or thus, into which so-and-so aforesaid had no entry except through such an one, who held that land for his life by a fine levied in our court &c. between the said party himself the claimant and so-and-so aforesaid the tenant, according to which fine the said land ought to revert to the said claimant after the death of the tenant, as he says, and wherefore he complains that so-and-so aforesaid unjustly excludes him by force; and unless he do so &c. as above. But if anybody has been in seysine through intrusion, and he who has the right claims against him, then let a writ issue in this form.

11.
Of entry through him, who did not hold except for life in some way or other, and when it ought to revert after his death.
f. 324.

The king to the viscount greeting. Enjoin A. that justly &c. he restore to B. so much land &c. which the said B. claims as his right against him from the grant of C. the father of the said A. (whose heir he is), and into which the said A. had no entry except through these means, that he intruded himself into that land after the death of D. the mother of the said A. who had recovered that land as her dower against the aforesaid B. in our court before &c. by a judgment of our said court, and who unjustly excludes him by force, and unless he do so &c., then summon &c.: or otherwise: which B. claims to be his right by a grant from C. his father, and into

12.
Of entry by intrusion.

patris sui, & in quam non habet ingressum, nisi per intrusionem, quam fecit in terram illam post mortem ipsius C. qui terram illam habuit in custodia ad opus ipsius B. dum infra ætatem fuit, ut dicit: vel aliter: Præcipe A. q̄ justè &c. reddat B. & C. uxori ejus tantam terram &c. quam idem A. dedit in maritagium p̄dicto B. cum p̄dicta C. filia sua, & in quam idem A. non habet ingressum post donum illud nisi per intrusionem, quam in eam fecit post mortem D. patris ipsius B., qui terram illam habuit in custodia ad opus p̄dictorum B. et C. uxoris suæ de voluntate & assensu ipsius D. qui fuit eorum custos, per assignationem et voluntatem ipsius A. (ut ipsi B. et C. dicunt). Item si vir alicujus uxoris vendiderit hæreditatem alicujus pueri uxoris suæ, q̄ fuerit in custodia ipsorum: et tunc sic.

13.
De ingressu
per custodiam.

Rex vicecomiti salutem. Præcipe A. quòd juste &c. reddat B., qui plenæ ætatis est (ut dicitur), tantum terræ cum pertinentiis in tali villa, quod clamat esse jus et hæreditatem suam, et in quod p̄dictus A. non habet ingressum nisi per C., qui non nisi custodiam inde habuit, dum idem B. infra ætatem et in custodia sua fuit (ut dicit): et nisi fecerit &c. ut supra.

14.
De ingressu per
maritum.

Rex vicecomiti salutem. Præcipe A. quòd juste et sine dilatione reddat B. &c., et in quam idem A. non habet ingressum nisi per C. quondam virum matris ipsius B. (cujus hæres ipse est), qui illam ei vendidit ut dicit &c. Item si quis dederit dum hæres fuerit infra ætatem & in custodia sua, et hæres petat de seysina sua propria, tunc fiat breve in hac forma.

15.
Si hæres
peteret de
seysina

Si autem aliquis hæres petat de seysina antecessorum suorum aliquam terram, quam custos eorum alienaverit dum fuerit infra ætatem, et in custodia sua, tunc fiat

which he has no entry, except by an intrusion, which he has made into that land since the death of the said C., who held that land in his custody for the benefit of the said B. whilst he was under age, as he says: or otherwise: Enjoin A. that he justly &c. restore to B. and C. his wife so much land &c., which the said A. gave as a marriage portion to the aforesaid B. together with C. his daughter, and into which the said A. has no entry after that grant except by an intrusion, which he made after the death of D. the father of the said B. who had that land in his custody for the benefit of the aforesaid B. and C. his wife with the will and assent of the said D., who was their guardian by the assignment and will of the said A. (as B. and C. say). Likewise if the husband of any wife has sold the inheritance of any male child of his said wife, which had been in the custody of them both: and then thus:

The king to the viscount greeting. Enjoin A. that justly &c. he restore to B. who is of full age (as it is said) so much land with its appurtenances in such a vill, which he claims to be his right and his inheritance, and into which the said A. had no entry except through C., who had only the custody thereof, whilst B. was under age and in his guardianship (as he says): and unless he do so &c. as above.

The king to the viscount greeting. Enjoin A. that he justly and without delay restore to B. &c., and into which the said A. has no entry except through C. formerly the husband of the mother of the said B. (whose heir he is), who sold it to him as he says &c. Likewise if a person has granted it, whilst the heir was under age and under his guardianship, and the heir claims of his own seysine, then let the writ issue in this form.

But if any heir claims from the seysine of his ancestors a certain land, which their guardian has alienated, whilst they were under age and under his guardianship, then

antece-
sor, dum
fuerit infra
ætatem. breve in hac forma. Præcipe &c. ut supra: quod clamat esse jus et hæreditatem suam, et in quod idem A. non habet ingressum nisi per C., qui non nisi custodiam inde habuit dum talis pater vel mater, frater vel soror, avus vel avia, avunculus vel amita, consanguineus vel consanguinea, sive antecessor ipsius B. (cujus hæres ipse est) infra ætatem et in custodia sua fuit, ut dicit &c.: et nisi &c.

f. 324 b. Vel aliter: & in quam non habet ingressum nisi per
16. C. cujus pater vel alius antecessor terram illam habuit
Item, dum fuerit infra ætatem. in custodia cum ipso B., dum idem B. fuit infra ætatem: modo¹ habet ætatem (ut dicitur). Et unde idem talis pater vel alius antecessor obiit seysitus de terra illa ratione custodiæ ipsius B.: & nisi fecerit &c.

17. Vel aliter: In quam idem A. non habet ingressum
Item, dum in custodia. nisi per C. qui terram illam ei dimisit, dum terra illa fuit in custodia ipsius C. per præceptum nostrum, & nisi fecerit &c.: vel aliter: Præcipe A. quòd juste &c. reddat B. (qui plenæ ætatis est) tantam terram &c., quam clamat esse jus & hæreditatem suam, & in quam non habet ingressum nisi ratione custodiæ, eo quòd prædicta terra est de feodo ipsius A.: & nisi fecerit &c.

18. Vel sic: Et in quam non habet ingressum nisi per
Item, dum fuerit infra ætatem et modo habet ætatem. C., cujus pater terram illam habuit in custodia cum ipso B. dum idem B. fuerit infra ætatem, & modo habet ætatem. Et unde idem pater talis obiit seysitus de terra illa, ratione custodiæ ipsius B.: et nisi fecerit &c.

19. Vel aliter: In quam idem A. non habet ingressum
Dum maneret de familia sua. nisi per C. dum idem B. fuit in custodia sua, & idem A. terram illam ei dimisit, dum remaneret de familia

¹ "et modo," MS. Rawl. C. 160.

let the writ be in this form. Enjoin so-and-so &c. as above, which he claims to be his right and inheritance, and into which the said A. has no entry except through C. who had only the guardianship thereof, whilst his said father or mother, grandfather or grandmother, uncle or aunt, cousin-male or cousin-female, or the ancestor of the said B. (whose heir he is) was under age and under his guardianship, as he says &c.: and unless &c.

Or otherwise; and into which he had no entry except through C., whose father or other ancestor held that land in his custody together with B. himself, whilst the said B. was under age, and lately he is of age (as it is said), and whence his said father or other ancestor died seysed of that land by reason of his guardianship of the said B.: and unless he do so &c.

Or otherwise: into which the said A. has no entry except through C. who demised that land to him, whilst that land was in the custody of the said C. through our precept, and unless he do so &c. Or otherwise: Enjoin A. that justly &c. he restore to B. (who is of full age) so much land &c., which he claims to be his right and inheritance, and into which he has no entry except by reason of his guardianship, inasmuch as the aforesaid land is of the fee of the said A.: and unless he do so &c.

Or thus: and into which he has no entry except through C., whose father held that land in his custody together with the said B. whilst the said B. was under age, and he has lately come of age. And whence the said father of so-and-so died seysed of that land, by reason of his guardianship of the said B., and unless he do so &c.

Or otherwise: into which the said A. had no entry except through C. whilst the said B. was under his guardianship, and the said A. demised the land to him whilst B. remained a member of the family of said C.,

seysine of
his ances-
tor, whilst
he was
under age.

f. 324 b.
16.
Likewise
whilst he
was under
age.

17.
Likewise
whilst
under
guardian-
ship.

18.
Likewise
whilst he
was under
age, and has
only lately
come of
age.

19.
Whilst he
remained a
member of
his family.

ipsius C., & modo non est de familia ipsius C. ut idem B. dicit: et nisi fecerit &c. Eodem modo de communia pasturæ, si fuerit alienata et dimissa ad terminum qui præteriit. Et tunc fiat tale breve, dum tamen pastura fuerit certa et designata ad certum numerum averiorum.

20.
Breve de
pastura
data ad
terminum,
qui præ-
teriit.

Rex vicecomiti salutem. Præcipe A. quòd juste &c. reddat B. communiam pasturę ad tot boves, et tot oves (et sic deinceps) in tali villa, quam clamat esse jus suum, ut pertinentem ad liberum tenementum suum in tali villa, in quam idem A. non habet ingressum, nisi per C. (cujus hæres idem B. est), qui pasturam illam ei dimisit ad terminum qui præteriit, ut dicit: et nisi fecerit &c.

CAP. VI.

1.
De diver-
sitate ju-
ratarum
secundum
diversi-
tatem
brevium.

Cum petens se posuerit in inquisitionem & juratam de intentione probanda, et tenens similiter de responsione et exceptione, tunc fiant juratę secundum formam et diversitatem brevium in hac forma.

2.
Si partes
posuerint
se in jura-
tam secun-
dum diver-
sitate
brevium.

Si autem per virum cui uxor contradicere non potuit, tunc sic: ad recognoscendum super sacramentum suum, si prædictus talis tenens aliud jus vel alium ingressum habuit, vel simpliciter alium ingressum, in tantam terram cum pertinentiis in tali villa, quam prædicta talis clamat ut jus suum, vel ut jus et hæreditatem suam, vel ut jus et maritagium suum, vel ut dotem suam, quam habuit de dono talis primi viri sui versus talem, quam per talem quondam virum suum vel secundum virum suum secundum formam brevis de ingressu, et cui in vita sua contradicere non potuit, vel si ingressum habuit in prædictā talem terram per prædictum talem petentem qui terram illam ei dedit vel vendidit, antequam prædictus talis vir suus eam desponsasset, vel post mortē talis viri sui in ligea

f. 325.

and he has lately ceased to be a member of his family, as B. says : and unless he do so &c. In the same way concerning common of pasture, if it has been alienated and demised for a term which has passed. And then let such a writ issue, provided however that the pasture be certain and designed for a certain number of cattle.

The king to the viscount greeting. Enjoin A. that justly &c. he restore to B. common of pasture for so many beeves, and so many sheep (and so in succession) in such a vill, into which the said A. has no entry except through C. (whose heir the said B. is), who has demised that pasture to him for a term which has passed, as he says : and unless he do so &c.

20.
A writ for pasture granted for a term, which has passed.

CHAPTER VI.

When a claimant has put himself upon an inquest and a jury to prove his demand, and the tenant has put himself in a similar manner to prove his answer and exception, then let the juries be constituted according to the form and diversity of the writs in this form.

1.
Of the diversity of juries according to the diversity of writs.

But if through the husband, whom his wife could not contradict, then thus : to recognise upon their oath, if so-and-so aforesaid has had any other right or any other entry, or simply another entry, into so much land with its appurtenances in such a vill, which so-and-so aforesaid claims as her right, or as her right and inheritance, or as her right and her marriage portion, or as her dower, which she had by gift from so-and-so her first husband, against so-and-so, or which she had through so-and-so formerly her husband, or her second husband according to the form of the writ of entry, and whom she could not contradict during his life, or if he had an entry into such land aforesaid through so-and-so aforesaid the claimant, who granted or sold that land to her before her said husband espoused her, or after the death of her said husband in the full widowhood of his said wife,

2.
If the parties have put themselves on a jury according to the diversity of the writs.

f. 325.

viduitate ipsius uxoris, quæ terram illam ei dedit vel vendidit &c. Et semper cùm modus & forma ingressus deducta sit, oportebit semper formare formam inquisitionis distinctè secundum responsionem tenentis, qui dedit ingressum, excipiendo & respōdendo, quòd alium habeat ingressum quàm petens proponat, vel diversum, & per alium. Item si alio modo uxor alienaverit rem viri sui, vel rem ppriam sine consensu viri sui, tunc sic: Ad recognoscendum super sacramentum &c. si prædictus talis tenens aliud jus vel alium ingressum habuerit in tantam terram cum pertinentiis in tali villa, quam talis clamat ut jus suum, si terra fuerit propria, vel quam talis & uxor ejus clamāt esse jus uxoris suæ, vel in dotem uxoris suæ, vel de rationabili dote secundum formam brevis de ingressu, & quam prædicta talis uxor ei dimisit sine assensu viri sui, ut idem petens dicit, vel si prædictus talis tenens ingressum habuit in terram illam per prædictum virum, qui terram illam ei vendidit vel dedit, per prædictam uxorem ante desponsationem vel post, ut supra, sicut idem tenens dicit.

3. Item si sine assensu episcopi, abbatis, vel prioris, per capitulum fiat alienatio, vel per canonicum sine assensu capituli, vel per obedientiarium, vel procuratorem sine consensu abbatis vel prioris, vel per ballivum sine assensu domini, vel per ballivum, dum quis fuerit in prisiona, tunc semper fiat una pars juratæ secundum formam brevis, & disjuncta secundum responsionem tenentis, & omni casu in brevibus de ingressu singularibus, ut si per illum qui tenuerit in villenagio. Item per aliquem dum non fuit sanæ mentis. Item si per eum qui non tenuerit nisi ad vitam. Item per felonem post feloniam factam. Item

3.
Jurata sine
assensu
episcopi,
vel prioris,
vel abba-
tis.

Britton, V.
ch. xiv. § 7.

who granted or sold that land to him, &c. And always when the mode and form of the entry has been denied, it will be requisite to shape the form of the inquest distinctly according to the answer of the tenant, who denies the entry, by excepting and answering, that he had another entry than that which the claimant propounds, or a diverse entry and through another person. Also if the woman has in a different manner alienated the estate of her husband, or her own estate without the consent of her husband, then thus: to recognise upon their oath, &c. if so-and-so the tenant aforesaid had any other right or any other entry into so much land with its appurtenances in such a vill, which so-and-so claims as his right, if the land be his own, or which so-and-so and his wife claim to be the right of his wife, or as the dower of his wife, or of her reasonable dower according to the form of the writ of entry, and which the wife aforesaid demised to him without the assent of her husband, as the said claimant says, or if such tenant aforesaid had an entry into that land through the aforesaid husband, who sold or granted the land to him, or through the aforesaid wife before her espousals or after them, as above, as the said tenant says.

Likewise if an alienation has been made without the assent of the bishop or of the abbot or of the prior, or through a canon without the assent of the chapter, or through an obedientiary or a steward without the consent of the abbot or prior, or through a bailiff without the assent of the lord, or through a bailiff whilst one was in prison, then let one part of the jury be constituted according to the form of the writ, and the remainder according to the answer of the tenant, and in every case in single writs of entry, as if through him who held in villenage. Likewise through some one when he was not of sound mind. Likewise through him who did not hold except for his life. Likewise through a felon after his commission of felony. Likewise if an entry

3.
A jury
without the
assent of
the bishop,
or of the
prior, or of
the abbot.

si ingressus simpliciter proponatur & simpliciter dedicatur absque eo quòd aliquid excipiatur cōtra ingressum, tunc sic: Ad recognoscendum &c. si A. pater B. aliud jus vel alium ingressum habuit in tantam terram cum pertinentiis &c. nisi per C. custodem D. fratris E. scilicet qui petit, cujus hæres ipse E. est, dum idem D. fuit infra ætatem, & in custodia prædicti C. cum terra sua & aliis terris suis, quia tam prædictus B. filius & hæres prædicti A., cui F. de N. warrantizavit prædictam terram, & versus quem B. idem E. in eadem curia nostra clamavit terram illam ut jus suum, quam prædictus E. frater & hæres prædicti D. posuerunt se inde in juratam illam, & interim, &c. & se interim ita inde certificent quòd præfatos justiciarios nostros inde reddant certiores. Teste &c.

4.
Item super
intrusionem.

f. 325 b.

Item si per intrusionem, tunc sic: Ad recognoscendum super sacramentum suum, si A. pater B. die quo obiit fuit seysitus ut de feodo de tanta terra cum pertinentiis in tali villa, quam C. in curia nostra &c. clamat ut jus suum versus prædictum B., vel si idem B. alium ingressum non habuit in terram illam cum pertinentiis, quàm per hoc quòd se intrusit in terram illam post mortem prædicti A. patris sui, cui prædictus C. terram illam dimisit ad terminum qui præteriit (ut dicitur), quia tam prædictus &c. Et hæc exempli causa sufficiant, quia infiniti sunt ingressus, & formæ brevium infinitæ, & variantur formæ inquisitionum multipliciter, & sæpius secundum varietatem brevium, & responsionum: de quibus omnibus (cùm sint infinita) mentio fieri non poterit.

5.
Item breve
si per
uxorem
quæ non

Item si uxor alienaverit dotem, & dicatur in brevi de ingressu: Et in quam talis non habet ingressum nisi per talem, quæ fuit uxor talis, qui terram illam

be simply propounded and simply denied without any exception being raised against the entry, then thus : to recognise, &c., if A. the father of B. had any other right or any other entry into so much land with its appurtenances, &c., except through C. the guardian of D. the brother of E., to wit, the claimant, whose heir E. is, while the said D. was under age and in the guardianship of the said C. with his land and other lands of his, because the aforesaid B. the son and heir of the aforesaid A. to whom F. de N. warranted the aforesaid land, and against which B. the said E. in our same court claimed that land as his right, as well as the aforesaid E. the brother and heir of the aforesaid D. have placed themselves thereupon on that jury, and in the meanwhile, &c., and let them certify themselves thereon in the mean time, so that they may render our aforesaid justiciaries more certain thereof. Witness, &c.

Likewise if through an intrusion, then thus : to recognise upon their oath, if A. the father of B. on the day on which he died was seysed as of fee of so much land with its appurtenances in such a vill, which C. in our court, &c., claims as his right against the aforesaid B., or if the said B. had not any other entry into that land with its appurtenances than by intruding himself into that land after the death of the aforesaid A. his father, to whom the aforesaid C. demised that land for a term which has passed (as is said), because as well the aforesaid, &c. And these are sufficient for example's sake, because entries are infinite, and the forms of writs infinite, and the forms of inquests are varied in manifold ways, and repeatedly according to the variety of writs and answers ; concerning all of which (since they are infinite) mention cannot be made.

4.
Likewise
upon an
intrusion.

f. 325 b.

Likewise if a wife has alienated her dower, and it is said in the writ of entry, and into which so-and-so has no entry except through such an one, who was the wife

5.
Likewise, if
through a
wife who

nisi dotem ei dimisit, & quæ non nisi dotem inde habuerit, de
&c. dono talis quondam viri sui, post cujus mortem terra illa reverti debet ad talem sicut ad warantum de dote sua, si tenens ingressum illum per talem defendat, & dicat quòd nullum habuerit ingressum per prædictam uxorem, sed per talem antecessorem ipsius petentis (cujus hæres ipse est), qui terram ei dedit per chartam suam quam profert, & quæ hoc testatur: si ex parte adversa replicetur, q charta valere non debeat eo quòd facta fuit dum donator non fuit compos mentis suæ, tunc fiat ut supra, quia cognoscit quodāmodo chartam & donum, licet invalidum, & de jure irritandum. Item si charta omninò dedicatur, vel dicatur quòd omninò valere non debeat, quia ille qui donasse debuit nullam omninò inde seysinam habuit, tunc petens p̄bet dictum suum si possit. Sed simplici voci suæ non erit credendum, nisi sufficientem habeat probationē, nisi ita sit quòd credendū sit ei & simplici voci suæ in causæ cognitione. Et in quo casu, tenens se ponet in juratam per hæc verba. Sed videndum erit utrum ille qui dedit hæres fuit, & warrantus de dote mulieris, vel extranea persona: quòd si non, non valeret donatio: sed si sic, valere poterit. Poterit enim hæres dare id quod suum est, scilicet proprietatem, jus & feodum, & attornare donatorio servitium, ita quòd uxor tenens quoad vixerit habeat liberum tenementum. Et si uxor tenens dum vixerit se dimiserit, & donatorio suo seysinam reddiderit, non habet propter hoc donatorius ingressum per uxorem sed per hæredem, quod secūs esset, si tantū per uxorem. Ideo dicatur: Ad recognoscendum si prædictus A. pater B. aliud jus vel alium

of such an one, who demised that land to her, and who had only her dower thereof by the grant of such an one formerly her husband, after whose death that land ought to revert to so-and-so as to the warrantor of her dower, if the tenant contests that entry through so-and-so, and says that he had no entry through the aforesaid wife, but through such an ancestor of the claimants (whose heir he is), who granted him that land through his charter, which he produces, and which attests this: if on the opposite side it be replied, that the charter ought not avail, inasmuch as it was made when the grantor was not in possession of his faculties, then let it be done as above, because he acknowledges in a certain manner the charter and the grant, although it be invalid and is of right to be declared void. Likewise if the charter be altogether denied, or it be said that it ought not to avail at all, because he who should have granted it, had no seysine thereof at all, then let the claimant prove his own assertion, if he can. But credit is not to be given to his simple assertion, unless he has a sufficient proof, except it be that credit is to be given to him and to his simple assertion in the cognisance of the cause; and in which case the tenant shall put himself upon a jury in these words. But it will have to be seen, whether he who granted it was the heir and the warrantor of the dower of the wife, or an extraneous person, because if not, the grant would not avail, but if so, it may be valid. For the heir may grant what is his own, that is the property, the right, and the fee, and may attourn to the donatory a service, so that the wife the tenant may have a free tenement as long as she lives. And if the wife as tenant during her lifetime has demised herself and has restored seysine to her donatory, the donatory has not on that account an entry through the wife, but through the heir, which would be otherwise, if only through the wife. Therefore let it be said: to recognise, if the aforesaid A. the father of B. had any other right or any other

ingressum habuit in prædictam terram, quàm per prædictam C. quæ terram illam tenuit in dotem, de dono prædicti D. quondam viri sui (cujus heres ipse est), scilicet qui petit, sicut idem E. dicit, vel si ingressum habuerit in terram illam per prædictum B. qui terram illam ei dedit per chartam suam, & inde eam posuit in seysinam ita quòd attornavit eidem A. servitium C. de prædicta terra ut idem B. dicit, & interim &c. : et hoc sufficiat de inquisitione ad præsens.

CAP. VII.

1.
Si jurata
summo-
nenda est
coram
justiciariis.

f. 326.

Si autē aliqua jurata sūmonenda sit corā justic. vel corā ipso rege, quæ aliquādo fuit coram iv. justic. assignatis, tunc fiat tale breve. Rex vic. salutē, ꝑcipimus tibi q juratam quæ sūmonita fuit coram dilectis & fidelibus nostris &c. in adventu ipsorū in partes illas inter tales de tanta terra cū ptinentiis in tali villa, & quæ jurata nondū capta est (ut idem talis recordatur), venire facias coram justiciariis nostris &c. in eodem statu quo sūmonita fuit coram præfatis talibus, & habeas &c. Et in quo casu, si recognitores non venerint, tunc fiat tale breve. Præcipimus tibi, quòd habeas coram &c. ad talem terminū corpora A. B. & C. recognitorū juratæ sūmonitæ in curia nostra, &c. inter tales de tanto terræ &c. ad faciendam juratā illam, vel ad faciendam juratā illam cum aliis ad hoc electis. Præcipimus etiā tibi, quòd loco talis unius electorum qui obiit, vel qui amotus est, ponas aliū militem, & illum habeas ad ꝑfatum terminū ad faciendam juratā illam simul &c. : vel sic: ꝑcipimus tibi q in jurata quæ sūmonita est &c. inter tales de tali re

entry into the aforesaid land than through the aforesaid C. who had that land in dower, of the grant of the aforesaid D. formerly her husband (whose heir he is), to wit who claims, as the said E. says, or if he had an entry into that land through the aforesaid B. who granted that land to her by his charter, and placed her into seysine thereof in such a manner, that he attourned to the said A. the service of the aforesaid C. concerning the aforesaid land as the said B. says, and meanwhile, &c.: and let this suffice concerning the inquest for the present.

CHAPTER VII.

But if a jury is to be summoned before the justiciaries or before the king himself, which was sometime summoned before four justiciaries assigned, then let such a writ issue. The king to the viscount greeting. We enjoin you, that you cause to come before our justiciaries the jury which was summoned before our beloved and faithful &c. upon their coming into those parts between such persons concerning so much land with its appurtenances in such a vill, and which jury has not yet been held (as the said so-and-so records) &c., in the same state in which it was summoned before the aforesaid so-and-so, and have with you &c. And in which case, if recognisors have not come, then let a writ of this kind issue. We enjoin you that you have before &c. at such a term the bodies of A. B. and C., recognisors of the jury summoned in our court &c. between so-and-so, concerning so much land &c., to make up that jury, or to make up a jury with others chosen for that purpose. We enjoin you that in the place of so-and-so one of those chosen who has died, or who has been struck off, you place another knight, and have him present at the aforesaid term to make up that jury together with &c.: or thus, we enjoin you that on the jury which has been summoned &c. between certain persons on a certain subject &c. you

1.
If a jury is
to be
summoned
before the
justiciaries.

f. 326.

&c. ponas sex liberos & legales homines, alios à p̃electis ad praelectos, & qui non sunt essoniabiles, & eos habeas corā &c. ita q̃ jurata illa non remaneat p̃ defectu recognitorū &c. qui interim tenementa illa videant &c.

CAP. VIII.

1.
De brevi-
bus, si
firmarius
petierit
seysinam
propriam.

Item : Inter cætera in fine notandum, q̃ cū aliquis firmarius petierit seysinam ppriam, hoc facere possit, etsi non habuerit jus in re sive in tenem̃to, & illud alicui dimiserit ad terminū qui p̃terit, quia quodammodo jus habet possessorīū quale quale, quare cōpetat ei actio de dimissione ppria & facto pprio. Quod si in feodo, tunc expirat sua actio, & tunc incipit cōpetere pprietario, vel de nova disseysina vel de ingressu, vel de mero jure per breve de recto, secundum q̃ tenuerit ad vitam quocunq̃ modo, ut de libero tenemento tantū, vel in feodo sibi & hæredibus suis, sine usu & expletiis tantū, vel cum usu & expletiis ut de jure mero. Si autem ille dimiserit, qui tantum tenuit ad terminum vitæ, & de seysina propria petierit ingressum, ubi alius habuerit pprietatem, feodū scilicet & jus merum, tale breve nunquā vertetur per narrationē in breve de recto. Eodē modo, si quis petierit per ingressum tenementū q̃ dimisit ad terminū, & q̃ tenuit tantū in feodo sine usu & expletiis, nunquā vertetur tale breve de ingressu per narrationem in breve de recto.

2.
Qualia
brevia non
vertuntur
ad brevia

Si autē petierit de seysina ppria q̃ tenuit ut liberū tenemētum & in feodo cum usu & expletiis, & sic de jure mero, tunc cōpetere poterunt petenti duæ actiones,

place six free and loyal men, different from those previously chosen, in addition to those previously chosen, and who are not essoinable, and have them present before &c., so that the said jury shall not be stayed for default of recognisours &c., who may in the meantime view those tenements.

CHAPTER VIII.

Likewise, amongst other things it is to be noted that, when a termor has claimed his proper seysine, he may do this, although he has no right in the estate, or in the tenement, and has demised it for a term, which has passed, because in a certain manner he has a possessory right of some kind or other, wherefore he is entitled to an action concerning his own demise and his own act. But if it be in fee, then this action expires, and then the proprietor begins to be entitled, either concerning novel disseysine, or concerning entry, or concerning the mere right through a writ of right, according as he has held for life in some manner or other, as concerning the freehold only, or in fee for himself and his heirs without the use and profits, or with the use and profits as of mere right. But if he has demised it, who only held it for the term of his life, and he claims an entry in virtue of his proper seysine, where another has the property, to wit, the fee and the absolute right, such a writ will never be turned through the pleadings into a writ of right. In the same manner, if any one has claimed through an entry a tenement which he has demised for a term, and which he has held only in fee without the use and profits, such a writ of entry will never be turned through the pleadings into a writ of right.

But if he has claimed of his proper seysine what he has held as a freehold and in fee with the use and profits, and so of absolute right, then the claimant is entitled to two actions, and he may employ which he pleases.

Q 6366.

E

de recto
per narra-
tionem,
quia ille
qui petit
non habet
nisi libe-
rum tene-
mentum.

& uti poterit quâ voluerit. Et tunc etiam una electa, vertitur quandôq, una in aliam. Competit enim ei breve de ingressu, vel breve de recto. Et si breve de ingressu eligitur ubi omnia p̃dicta concurrunt, & petens fundaverit intentionem suam, & docuerit de jure suo, & quòd ad ipsum pertineat actio, tunc proponet ingressum, & illum probet per patriam vel instrumentum, ut supra dicitur.

3. Et si primò posuerit ingressum, & postea docere
Qualiter et
quæ ver-
tuntur.

f. 326 b.

velit de mero jure suo per descensum, sic vertitur breve de ingressu ad breve de recto, & conjungitur una actio cum alia, scilicet per breve de recto, vel per breve de ingressu per juratam, secundum quod tenens elegerit, totum terminabitur negotium. Et ideò habet tenens electionem, quia si, cùm petēti plures competant actiones, & uti poterit qua voluerit, eodem modo si tenenti cōpetant plures responsiones sive exceptiones peremptoriæ, quæ terminant totum negotium, uti poterit pro voluntate sua quacunq, illarum voluerit, quatenus tempus & probatio permiserit, ut si se tenuerit tenens ad ingressum, cavēdum erit quòd terminus non excedat tempus assisæ mortis antecessoris, ita quòd deficiat probatio de proprio visu & auditu. Et si se tenuerit ad rectum, extunc sicut p breve de recto erit procedendum, postquam tenens se posuerit in magnam assisam, vel se defenderit per duellū: & sic vertetur una actio pprietatis in aliam super pprietate. Sed actio super possessione nunquam per narrationē vertetur ad actionem super pprietate, nec e conversò. Sed cùm utraq, actio cōpetat petenti ab initio, & inceperit

And then even upon one having been chosen, sometimes through one is turned into the other. For he is entitled to a writ of entry or to a writ of right. And if the writ of entry be chosen where all the aforesaid conditions concur, and the claimant has founded his declaration and has explained his right, and that the action appertains to him, then he shall propound his entry, and let him prove it by the country, or by an instrument, as above said.

And if he has first propounded his entry, and afterwards wishes to explain his mere right by a descent, then the writ of entry is turned into a writ of right, and the one action is conjoined with the other, to wit, through a writ of right, or through a writ of entry through a jury, according as the tenant has elected, the whole business shall be determined. And accordingly the tenant has an election, because if, when the claimant is entitled to several actions and may employ which he pleases, in the same manner if the tenant is entitled to several answers or peremptory exceptions, which terminate the whole business, he may employ according to his pleasure whichever of these he wishes, as far as time and proof permits, as if the tenant has held himself to an entry, he must be careful that the term does not exceed the time of an assise of mortdancester, so that the proof from the proper sight and hearing [of the witnesses] should fail. And if he has held himself to the right, thenceforward the proceedings must be as through a writ of right, after the tenant has put himself upon a great assise, or should defend himself by battle, and so one action of proprietorship shall be turned into another action concerning the proprietorship. But an action of possession shall never be turned by the pleadings into an action concerning the proprietorship, nor conversely. But when the claimant is entitled from the commencement to either action and has begun at first to claim by a

3.
In what
manner
and what
writs are
so turned.
f. 326 b.

petere primò per breve de recto, & narraverit de jure suo per descensum, si tempus pbatonis permiserit in fine, post descensum bene poterit descendere ad ingressū per hæc verba. Et unde talis non habet ingressū nisi p talē cui &c. (ut supra per totū), sive hoc fuerit de ppria seysina sive aliena, & tunc (ut supra) secundum quod tenens elegerit defensionem erit pcedendum, sicut p breve de recto in omnibus, tam in essoniis quàm in aliis, secundū q pceditur per breve de ingressu, & de hac materia infra de essoñ de malo lecti.

4.
Qualiter
recurritur
per inqui-
sitionem
per juratam
de ingressu.

Quandoq, tamen locū habet breve de ingressu, & pbatio de visu pprio & auditu, ultra terminum assisæ mortis antecessoris, q quidem contingit de necessitate, & p defectu alterius actionis, ubi quis, qui nō habuerit nisi liberum tenementum, dimiserit ad terminū longissimū, qui excedit tēpus assisæ mortis antecessoris, & ubi scilicet agere non possit p breve de recto sup jure mero, cū nullū aliud ei cōpetat remedium, tunc de necessitate recurritur ad inquisitionē p juratā de ingressu, non obstante termino, quia q aliās non est licitū, necessitas licitū facit, ut si quis, qui ad vitā tenuerit quacūq, ratiōe, vel in feodo sine usu & expletiis, dimiserit ad terminū talē qui excedit tēpus assisæ mortis antecessoris, & ulterius supvixerit p tēpus qui¹ excedit terminū, adhuc subvenitur ei p breve de ingressu, & p juratam & pbationē de visu pprio alicujus & auditu, q de jure non esset cōcedendū. Et q ita fieri possit, pbatur de termino S. H. anno regis H. viii. in cōm Lync. de Thoma de Estotengni, ubi quædā, quæ tenuit nomine dotis, dedit cuidam ad terminum dotem suam, qui duravit per lx. annos & amplius. Et petiit per breve de ingressu. Et secundū ea quæ dicta sunt, perpendi poterit q quodlibet breve de in-

¹ "quod," MS. Rawl. C. 160.

writ of right and has pleaded concerning his right by descent, if the time of the proof will permit at the end, after the descent he may well be able to descend to an entry in these words: and whereof so-and-so has no entry except through such an one to whom &c. (as above through the whole), whether this may have been of his proper seysine or of another's, and then (as above) proceedings must be had according as the tenant has elected his defence, as in a writ of right in all things as well in essoins as in other matters according to the course of proceeding in a writ of entry, and on this matter below concerning an essoin of an illness confining one to bed.

Sometimes however a writ of entry has place, and a proof by the proper sight and hearing of witnesses, beyond the term of an assise of mortdancer, and where an action could not be brought by a writ of right upon the mere right, when he is entitled to no other remedy, then of necessity recourse must be had to an inquest by a jury concerning entry notwithstanding the term, because what otherwise is not lawful, necessity makes lawful, as if a person who holds for life in any manner whatsoever, or in fee without user and profits, has demised for such a term which exceeds the time of an assise of mortdancer, and has survived to a further period for a time which exceeds the term, he is still succoured by a writ of entry and by a jury, and a proof by the proper view and hearing of some one, which of right would not have to be conceded, and that it may so is proved in Hilary term in the eighth year of king Henry in the county of Leicester, concerning Thomas of Estotengni, where a certain woman who held in the name of dower, granted her dower to some one for a term, which lasted for sixty years and more. And he claimed by a writ of entry. And according to what has been said, it may be understood that

4.
In what
way re-
course is to
be had
through an
inquest by
a jury con-
cerning
entry.

f. 327.

gressu non convertitur in breve de recto, nec etiam in persona cujuslibet petentis per breve de ingressu, quia ei soli competit qui loqui possit de seysina propria, vel alicujus antecessoris sui, qui inde obiit seisitus ut de feodo & jure, & cujus seysinam petierit, non autem in persona ejus qui ad terminum annorum tenuerit, sicut firmarius, ut si ad terminum alicui tradiderit, & finito termino illo terminum suum repetere voluerit. Item dici poterit de eo qui tenuerit ad terminum vitæ quocunq̃ modo ut liberum teñtum, & illud dimiserit ad terminum, & finito termino repetere velit q̃ dimisit. Item illud idem dici poterit de eo qui non tenuerit nisi in feodo tantum, sine jure mero, i. sine usu & expletiis; & tales, licet jus habuerint quale quale, sicut jus possessorium, non tamen petere poterunt jus proprietatis, nec in judiciū deducere, quia jus tale non habuit. Cū igitur competat alicui utrumq̃ jus, viz. possessionis, & proprietatis, & petat p̃ breve de ingressu seysinā ppriam, vel alicujus antecessoris, ut jus & hæreditatem suam, vel maritagiū suum cum expressione tali vel sine, & sic dicat in fundatione intentionis suæ. Peto tantū terræ cum ptinentiis ut jus meum &c. Et unde ego, vel talis antecessor meus fuit seysitus in dominico suo ut de feodo tempore talis regis, capiendo expletia ad valentiam tanti, & de tali descendit jus illius terræ tali, & sic per omnia sicut per breve de recto, usq̃ ad petentē. Et tunc adjiciat: & unde idem talis non habuit ingressum nisi p̃ talem &c. Et ita q̃ faciat mentionē de ingressu, statim incipit breve de ingressu esse breve de recto ex narratione petentis, nisi

every writ of entry is not converted into a writ of right, nor indeed in the person of every claimant by a writ of entry, for he is alone entitled to it who can speak of his proper seysine, or of the seysine of some ancestor of his, who died seysed thereof as of fee and right, and whose seysine he claimed, but not in the person of him who held only for a term of years, as a termor, as if he had delivered a thing to any one for a term of years, and that term having been finished he wished to reclaim his term. The same may be said concerning him who has f. 327. held for the term of his life in whatever manner as a free tenement, and has demised it for a term, and upon the term being finished wishes to reclaim what he has demised. Likewise the same may be said, concerning him who has not held except only in fee without the absolute right, that is without the use and profits, and such persons although they have a right of some kind or other, as a possessory right, cannot however claim a right of property, nor bring it into court, because he had not such a right. When therefore any one is entitled to either right, a right of possession and of property, and he claims by a writ of entry his own seysine, or the seysine of a certain ancestor, as his right and inheritance, or his marriage portion with or without such an expression, and alleges thus in the foundation of his declaration, I claim so much land with its appurtenances as my right &c., and whereof I myself or so-and-so my ancestor was seysed in his domain as of fee in the time of such a king, by taking profits for the value of so much, and from such person the right of that land descends to so-and-so and so through everything as in a writ of right, up to the claimant. And then add, and whereof the said so-and-so had no entry except through such a person &c. And so that he makes mention of an entry, the writ of entry begins forthwith to be a writ of right from the pleadings of the claimant, unless the tenant

tenens ingressum elegerit. Et cùm in electione tenētis sit ab initio in responsione sua utrum se tenere voluerit ad defensionem juris vel ingressus, omnia habebit remedia, & omnes dilationes quæ ei cōpetere possent p breve de recto, saltem quousq̃ elegerit defensionē juris vel ingressus. Et si defensionem juris elegerit, remaneat loquela sicut p breve de recto. Si autem defensionem ingressus, q tunc desinat esse b̃re de recto, & redeat iterum ad naturā suam sicut p breve de ingressu. Cùm autē petens ab initio, & in intentione sua pponat utrumq̃, scilicet jus & ingressum, oportet q offerat se pbare utrumq̃, nisi tenens velit jus suum recognoscere. Ad cujus intentionem & pbationem oportet tenentē utrumq̃ defendere, habebit tamen electionem quam istarum defensionū subire voluerit, juris viz. vel ingressus: utramq̃ verò subire non tenetur, cùm una sufficiat p se sine alia, quia cùm petens jus suum pponat & ingressum, si in pbatione unius deficiat, erit quasi deficeret in probatione utriusq̃, ppter conjunctionem copulativam (&) quæ utramq̃ conjungit. Expedit igitur tenenti illā partem eligere, quam petens pbare non possit, & incerta erit pbatio petētis, donec tenens elegerit: poterit enim petens jus habere in re petita, & tamē inde ingressus nō erit talis ut pponitur; vel è converso, poterit etiam esse q petens jus habeat in re petita, & q talis sit ingressus ut pponitur, quo casu cùm tenens ad duas non teneatur defensiones, nec petens per consequens ad duas probationes, & factā electione, probare possit illam quam tenens elegerit, hoc erit tenenti periculosum. Et quia, cùm elegerit

has elected an entry. And since it is at the election of the tenant from the commencement in his answer whether he will keep himself to the defence of his right or of his entry, he will have every remedy and every delay to which he could be entitled by a writ of right, at least until he has chosen the defence of his right or of his entry. And if he has chosen the defence of his right, let the argument stand over as in a writ of right. But if he has chosen the defence of his entry, that then it ceases to be a writ of right, and it returns again to its nature as through a writ of entry. But when the claimant from the commencement and in his declaration propounds both, to wit, his right and his entry, it is incumbent that he offer to prove both, unless the tenant wishes to recognise his right. To whose declaration and proof it is incumbent that the tenant defend both, he shall have however the election which of these defences he wishes to undertake, to wit, that of the right or of the entry : but he is not bound to undertake both, since one is sufficient by itself without the other, for when the claimant propounds his right and his entry, if he fails in the proof of one, it will be as if he failed in the proof of both on account of the copulative conjunction (and) which conjoins both. It is expedient therefore for the tenant to choose that part which the claimant cannot prove, and the proof of the claimant will be uncertain until the tenant has elected ; for the claimant may have a right in the thing claimed, and nevertheless the entry thereof will not be such as is propounded ; or conversely, it may even be that the claimant has the right in the thing claimed, and that the entry has been such as is propounded, in which case, since the tenant is not held to two defences, nor the claimant consequently to two proofs, and an election having been made, he may prove that which the tenant has elected, this will be perilous to the tenant. And because when he has elected

jus, videtur tacitè innuere per consequens ingressum esse talem ut proponitur, & è conversò. Cùm autem tenens elegerit defensionem juris contra intentionem & probationem petentis, & aliam habebit electionem utrum viz. se ponere voluerit in magnam assisam, vel defendere per duellum, secundum quod inferiùs dicetur in causa proprietatis, per breve de recto, & maximè si tales sint personæ petens & tenens, quod inter eos

f. 327 b. jaceat magna assisa vel duellum. Si autem conjunctæ
 Cf. 267 b. sint personæ, & sit jus descendens utriquè de uno stipite, sicut inter fratres, antenatum & postnatum, avunculum & nepotem, ubi locum habebit computatio, quis eorum sit hæres propinquior, & cùm de propinquitate constiterit, quamdiu casus regis duraverit, nunquam ad judicium procedetur. Cùm autem breve de recto (ut prædictum est) per narrationem petentis, & responsionem tenentis qui ingressum elegerit, vertatur ad breve de ingressu, ex tunc deficiunt tenenti esse dilationes, & essonia de malo lecti, quæ ei competeabant antequam tenens ingressum eligeret, & extunc procedendum erit sicut per breve de ingressu. Si autem defensionem juris elegerit, tunc fiat per omnia sicut dictum est supra inter extraneas personas & conjunctas. Et in fine notandum, quod si inter conjunctas personas in placito per breve de recto, & per narrationem adjiciatur de ingressu, non expedit tenenti quòd se teneat ad ingressum, quia si talis sit ingressus ut proponitur, & probari possit, & tenens cùm ingressum elegerit, & per consequens tacitè innuit jus esse petentis, ut proponitur, probato ingressu, non obstante casu regis, petens obtinebit. Si autem ad defensionem juris

the right, he seems silently to imply as a consequence that the entry has been such as is propounded, and conversely. But when the tenant has elected the defence of the right against the declaration and proof of the claimant, he shall also have another election whether he will put himself upon a great assise, or defend himself by battle, according to what shall be said below in a cause of property by a writ of right, and chiefly if the claimant and the tenant be such persons, that a great assise or battle lies between them. But if they be privies in blood, and each has a right of descent from one stock, as between an elder and a younger brother, an uncle and a nephew, where a computation shall have place, which of them is the next heir, and when the next heir has been ascertained, they shall never proceed to judgment as long as the case of the king shall last. But when a writ of right (as said above) through the declaration of the claimant and the answer of the tenant, who has elected (to defend) his entry, is turned into a writ of entry, thenceforward delays cease to be allowable to the tenant and essoins of illness confining him to his bed, to which he was entitled before the tenant elected (to defend) his entry, and thenceforth proceedings must be taken as by a writ of entry. But if he has chosen to defend his right, then let every thing be done as above said between strangers and privies in blood. And in the end it is to be noted, that if between privies in blood in a plea by a writ of right and through the declaration mention be added of the entry, it is not expedient to the tenant that he hold himself to the entry, because if the entry be such as is propounded, and it can be proved, and the tenant when he has elected the entry, and consequently has tacitly implied that the right is the claimant's, as propounded, upon the entry having been proved, notwithstanding the case of the king, the claimant shall prevail. But if he has kept himself to the

f. 327 b.

se tenuerit, sive talis sit ingressus ut proponitur, sive non, factâ computatione parentelæ, quamvis constiterit quis eorum sit hæres propinquior, nunquàm pcedet iudicium ppter casum regis, nec aliud unquàm in causa pprietatis, inter conjunctas personas, durante casu, dum tamen tenens ad defensionem juris se tenuerit.

defence of his right, whether his entry be such as is propounded or not, upon a computation of relationship having been made, although it has been established which is the next heir, the judgment shall never proceed on account of the case of the king, nor any other ever in a cause of property between persons privies in blood, whilst that case lasts,¹ provided however that the tenant has kept himself to the defence of his right.

¹ The case of the king, to wit of King John against his nephew, Arthur of Brittany, came to an end on the death of Eleanor, the sister of Prince Arthur, in 1241, when both titles to the crown were united in King Henry III.

INCIPIT LIBER QUINTUS,
QUI DIVIDITUR IN
QUINQUE TRACTATUS,
QUORUM PRIMUS EST DE RECTO.

CAP. I.

1. De materia
hujus libri. Expedito tractatu de assisis & recognitionibus, quæ
f. 328. prodiit sunt sup jure possessorio, ad seysinam ppriam
vel alicujus antecessoris ut de feodo recuperādā: et
similiter expedito tractatu placitorū de ingressu asse-
quendo, cōsequēter agendū erit d placito sup jure, &
pprietate, de seysina ppria vel alicujus antecessor, de
teñto vel aliquo alio jure, d quo ātecessor nō obiit
seysitus ut de feodo, & ubi in judiciū deducit, & ter-
minat utrūq jus simul, tā possessioñ viz. quam pro-
prietatis, secundum quod inferiùs dicitur, & ibi ratio
quare.

2. Quare hoc
placitum
de recto
ultimo
ponitur.
Britton, vi.
ch. iv. Placitū vero de recto ultimū sibi locum vendicat in
ordine placitorū, quia quicunq in hoc placito semel
amiserit p judicium, vel per assisam, vel per duellum,
nunqm ad aliā actionem habebit regressum, quia sēper
obstabit ei exceptio rei judicatæ. Et tale erit judi-
cium reddend, scilicet q petens recuperaret seysinam
suā quietē sibi & heredibus suis, de pdicto tali tenente

¹ Hic incipit Liber Quintus de tractatu super Breve de Recto. MS.
Rawl. C. 160.

HERE BEGINS THE FIFTH BOOK,
WHICH IS DIVIDED INTO
FIVE TREATISES,
OF WHICH
THE FIRST IS ABOUT RIGHT.

CHAPTER I.

The treatise having been completed concerning assises and recognitions, which have been handed down to us respecting possessory right, to recover one's own seysine or the seysine of an ancestor as of fee, and in like manner the treatise of pleas for obtaining entry having been completed, we must consecutively treat of the plea respecting right and property, of one's own seysine or of the seysine of an ancestor, concerning a tenement or any other right, of which an ancestor has not died seysed as of fee, and where it is brought into judgment and both rights are determined simultaneously, as well that of possession as of property, according to what will be said below, and there the reason wherefore. 1. Concerning the matter of this book. f. 328.

But a plea of right claims for itself the last place in the order of pleas, because whoever in this plea has once lost through a judgment or through an assise, or through battle, shall never have recourse to another action, because the exception of the matter having been adjudged will always be in the way. And such a judgment will have to be rendered, to wit, that the claimant should recover his seysine quietly for himself and his heirs from so-and-so the tenant aforesaid and his heirs in per- 2. Wherefore this plea respecting right is placed last.

& hæredibus suis imperpetuum. Per judiciū dico: quia secūs est si per defaltā, aliqua habita distinctione, sicut inferiūs diceſ de defaltis. Et si quis semel egerit p hoc breve de recto qualitercunq̄, (ut p̄dictum est,) si in suo loco impetretur, nunquā postmodū ad actionē super possessionē regressum habebit, & maximè cū placitum p breve de recto utrumq̄ jus, tam possessionis quā p̄rietatis (ut paulò ante dictum est), comprehendat.

CAP. II.

1. Et quia variæ sunt formæ brevium de recto, ideo
 De diversis de formulis videamus, & imprimis de illis quæ ali-
 formis formis
 brevium de brevium de
 recto. recto.

Et quia variæ sunt formæ brevium de recto, ideo de formulis videamus, & imprimis de illis quæ ali-
 quando terminantur in curia dominorum suorum, quorum hæc est prima. Rex tali episcopo salutem. Præcipimus tibi, quòd sine dilatione plenum rectum teneas tali de tanto terræ cum pertinentiis in tali villa, quod clamat tenere de te p liberum servitium tanti per annum pro omni servitio, & quod talis ei deforciat. Et nisi feceris, vic' talis faciat, ne amplius inde clamorem audiamus pro defectu recti. Teste &c. Vel sic: de tertia parte unius feodi militis in tali loco vel villa, quam clamat de te tenere, & quam talis ei deforciat. Si autem servitium fit militare, tunc sic: Per servitium feodi unius militis, vel dimidii, vel quartæ partis feodi unius militis, vel per servitium tot denariorum quando 40 s. capiuntur de scuto, vel sic: per servitium tot denariorum quando duæ marcæ, vel xx. s. capiuntur de scuto, vel per servitium, unde tot carucatæ faciunt feodum unius militis, vel sic: per servitium, unde tot bovatae vel tot virgatae terræ faciunt feodum unius militis pro omni servitio. Et notandum quòd in servitio militari non dicitur per liberum servitium, & ideò, quia constat quòd feodum tale liberum est,

petuity. I say by a judgment, because it is otherwise if it is through default, some distinction having been made, as will be explained below concerning defaults. And if any one has once proceeded by this writ of right in any manner whatever (as aforesaid), if it be sued out in its proper place, he shall never have recourse afterwards to an action about the possession, and chiefly since a plea by a writ of right comprehends each right, that of possession as well as of property, as has been stated above.

CHAPTER II.

And because the forms of writs of right are various, therefore let us see about formulas, in the first place concerning those, which are sometimes determined in the court of their own lords, of which this is the first. The king to such a bishop greeting. We enjoin you, that without delay you maintain full right to such an one of so much land with its appurtenances in such a vill, which he claims to hold of thee by a free service of so much by year for all service, and which so-and-so deprives him of. And unless you do so, let such a viscount do it, that we may not hear any further complaint thereof for default of right. Witness &c. Or thus, of the third part of a knight's fee, or of a half fee, or a fourth part of a fee of one knight, or by the service of so many denarii when forty solidi are taken for a shield, or thus, by a service of so many denarii when two marks or twenty solidi are taken for a shield, or by a service, under which so many carucates make the fee of one knight, or thus, by a service under which so many bovates and so many virgates of land make the fee of one knight, for every service. And it is to be noted that in the case of military service it is not said by free service, and for this reason, because it is certain that such a fee is free, nor even, where the quantity of the

1.
Of different
forms of
writs of
right.

nec etiam, ubi quantitas feodi exprimitur in quātitate terræ petita, non opponitur¹ aliquod servitium, quia in quantitate feodi ostenditur quantitas servitii. Sunt autē infinita s̄vitia, & diversa, & innumerabilia in brevi de recto, secundū q̄ sunt à diversis dominis capitalibus feoffatoribus constituta. Et ided non possūt in scripto cōprehendi omnia. Fit etiam aliquando feoffamentum sic, & breve sic. Quod clamat tenere de te per liberum servitium inveniendi tibi unum servientem equitem ad eundum tecum in exercitum in Walliam, ad
 f. 328 b. summonitionem tuam, ad custum suum, vel custum tuum, pro omni servitio, vel sic: Per liberum servitium sequendi curiam tuam, vel portandi brevia tua infra regnum Angliæ, ad summonitionem tuam, & custum suum, vel custum tuum, pro omni servitio, vel sic:
 Britton, iii. Per servitium unius asturcii sori, vel unius espervarii
 ch. ii. § 6. sori, vel per servitium unius paris calcarium deauratorum, vel albarum cherothecarum, pro omni servitio, & sic de aliis, secundum formam chartarum & feoffamentorum. Fit etiam aliquando servitium annuum, & servitium militare simul & pro eadem terra, & tunc in brevi proponendum est servitium annuum, sic: Per liberum servitium x. s. per annum, & tunc dicatur, & per s̄vitium unius feodi militis pro omni servitio, quia si hæc determinatio p̄ annum postponeretur huic ultimæ clausulæ, sic videretur referri ad totum præcedens, & ita sequeretur inconveniens, quia servitium militare non est annuum.

2. Rex tali domino salutem. Præcipimus tibi, quodd
 Breve de recto, si terra partibilis sit in socagio. justè & sine dilatione plenum rectum teneas talibus de tanto terræ cum pertinentiis in tali villa, quod clamat esse rationabilem partem suam quæ eos, vel eas, contingit de libero tenemento quod fuit talis patris,

¹ "apponitur," MS. Rawl. C. 160.

fee is expressed in the quantity of the land claimed, there is not appended any service, because in the quantity of the fee is shown the quantity of the service. But services are infinite and diverse and innumerable in a writ of right, according as they have been appointed by different chief lords the feoffors. And therefore they cannot all be comprehended in writing. A feoffment is also sometimes made in this manner, and a writ thus: That he claims to hold of thee by a free service of finding for you one serving horseman to go with you to the army in Wales at your summons, at his own cost or at your cost, for the entire service; or thus, by the free service of following your court, or of carrying your writs within the realm of England at your summons and at his own cost, or at your cost, for the entire service; or thus, for the service of one falcon in his first plumage, or of one sparrow-hawk in his first plumage, or for the service of one pair of gilt spurs, or one pair of white gloves, for the entire service, and so of others, according to the form of the charters and of the feoffments. There is sometimes established a yearly service, and a military service at the same time and for the same land, and then in the writ the yearly service is to be propounded thus: by a free service of ten solidi annually, and then let it be said, and by the service of one knight's fee for the entire service, because if this determination "annually" were postponed to this last clause, it would thus seem to be referred to the whole which precedes it, and the consequence would be inconvenient, because military service is not annual. f. 328 b.

The king to lord so-and-so greeting. We enjoin you, that justly and without delay you maintain full right to such persons of so much land with its appurtenances in such a vill, which they claim to be their reasonable share that belongs to them, male or female, of a free tenement which belonged to so-and-so their father or their

2.
A writ of right if the land be shareable in socage.

vel matris, avi vel aviaë, avunculi vel amitæ sui¹ in eadem villa, & tenere de te per liberum servitium tanti per annum pro omni servitio, quod talis ei deforciat, & nisi feceris, vicecomes talis faciat ne amplius inde clamorem audiamus pro defectu recti. Teste &c., vel sic: Quod clamat² esse de rationabili parte sua quæ eos contingit de libero tenemento quod fuit talis patris vel matris, avunculi vel amitæ, ut supra.

3.
Breve de
recto
ballivis
sokæ vel
custodibus
honorum.

Rex ballivo sokæ de tali loco, vel custodi talis honoris salutem. Præcipimus tibi quòd sine dilatione plenum rectum teneatis tali, de tanto terræ cum pertinentiis in tali villa, quod clamat tenere de prædicta soka, vel de prædicto honore, per liberum servitium tanti per annum pro omni servitio, quod talis ei deforciat, & nisi feceris, talis vicecom̃ faciet, ne ampliùs inde clamorem audiamus p defectu recti. Teste &c.

4.
Breve de
recto, si
quis tenere
debet in
capite de
rege.

Rex vicecomiti salutem. Præcipe tali quòd justè &c. reddat tali tantum terræ cum pertinentiis in tali villa, quod clamat esse jus & hæreditatem suam, & tenere de nobis in capite, & unde queritur quòd prædictus talis injustè ei deforciat, & nisi fecerit, & idem talis fecerit te securum de clamore suo prosequendo, tunc sumoneas per bonos summonitores præfatum talem, quòd sit coram justitiariis nostris apud Westmonasterium, tali die, ostensurus quare non fecerit, & habeas ibi summonitores, & hoc breve. Teste &c.

5.
Breve de
recto cus-
todi, ubi
hæres
fuerit infra
ætatem.

Rex custodi terræ & hæredis talis salutem. Præcipimus tibi quòd justè & sine dilatione plenum rectum teneas tali de tanto terræ cum pertinentiis in tali villa, quod clamat tenere de prædicto hærede per liberum servitium tanti per annum pro omni servitio, quod talis ei deforciat, & nisi feceris, vicecomes noster talis faciat, &c. ne ampliùs &c.

¹ "sum," MS. Rowl. C. 160. | ² "clamant," id.

mother, grandfather or grandmother, uncle or aunt in the same vill, and to hold from you by the free service of so much for the year for all service, which so-and-so deprives him of, and unless you do so, let such a viscount do it, that we may not any longer hear a complaint thereon from defect of right. Witness &c., or thus: which they claim to be of their reasonable share, which belongs to them, of the free tenement which belonged to such a father or mother, uncle or aunt as above.

The king to the bailliff of the soke of such a place, or to the keeper of such an honour, greeting. We enjoin you that without delay you maintain full right to such a person of so much land with its appurtenances in such a vill, which he claims to hold of the aforesaid soke, or of the aforesaid honour, by a free service of so much for the year for all service, which so-and-so deprives him of, and unless you do so viscount so-and-so shall do so, that we may not hear any longer a complaint thereon for defect of right.

3.
A writ to the bailliff of the soke of such a place or to the keeper of such an honour.

The king to the viscount greeting. Enjoin so-and-so that justly &c. he restore to such an one so much land with its appurtenances in such a vill, which he claims to be his right and inheritance, and to hold of us in chief, and whereof he complains that so-and-so aforesaid deprives him, and unless he do so, and if the said so-and-so has given you security to prosecute his claim, then summon by good summoners so-and-so aforesaid, that he appear before our justiciaries at Westminster on such a day in order to show wherefore he has not done so, and have there the summoners and this writ. Witness &c.

4.
A writ of right, if any person ought to hold in chief of the king.

The king to the guardian of the land and of the heir of so-and-so greeting. We enjoin you that justly and without delay you maintain full right to such a person of so much land with its appurtenances in such a vill, which he claims to hold of the aforesaid heir by free service of so much by the year for all service, which so-and-so deprives him of, and unless you do so, let our viscount so-and-so do it &c., that we may no longer &c.

5.
A writ of right to a guardian, where the heir is under age.

6. Rex ballivis suis de tali villa salutem. Præcipimus
 Breve ballivis manerio-
 rum secun-
 dum con-
 suetudi-
 nem ma-
 neriorum. vobis, quòd sine dilatione & secundum consuetudinem
 manerii nostri de tali villa plenum rectum teneatis
 tali, de tãto terræ cum pertinentiis in tali villa, quod
 talis ei deforceat, ne ampliùs &c. Teste &c. Si autem
 burgagium petatur, tunc sic.

f. 329. Rex ballivis suis de tali burgo salutem. Præcipimus
 7. Breve ballivis de
 burgo. vobis, quod plenum rectum teneatis A. de tali villa,
 de uno mesuagio cum ptinentiis in tali villa, quod
 clamat tenere de nobis per liberum servitium tanti
 per annum p omni servitio, vel in liberum burgagium,
 vel in liberum maritagium pro omni servitio, quod talis
 ei deforciat, & nisi, &c. Teste &c. Est etiã alterius
 modi breve de recto, quod dirigitur hæredi alicujus,
 sub nomine mulieris quæ habuit partē dotis suæ,
 sive plus sive minus, quod tale est.

8. Breve de
 recto de
 dote, ubi
 mulier
 partem
 habuerit. Rex tali heredi salutem. Præcipimus tibi, q sine
 dilatione plenum rectū teneas tali mulieri, de tertia
 parte tantæ terræ, vel redditus, vel bosci, vel prati, vel
 unius vel duorū, vel tot mesuagiorū, cum ptinentiis in
 tali villa, qm clamat esse de rationabili dote sua, quæ
 eam contingit de liberto teñto quod fuit talis quondam
 viri sui in eadem villa, vel in alia, & tenere de te p
 liberum servitium ut supra. Si autem dos, quæ peti-
 tur, defendi debet sub servitio dotis quæ tenetur, tunc
 sic: Quam clamat pertinere ad liberum teneñtum suum
 quod de te tenet in dotem in eadem villa vel in alia,
 p tale serviitiū: vel sic, Quam clamat tenere de te in
 dotē p tale serviitiū. Est etiã alterius modi bře de
 recto de consuetudinibus & švitiis, quod imēdiatē diri-

The king to his bailiffs of such a vill greeting. ^{6.}
 We enjoin you that without delay, and according to the custom of our manor in such a vill, you maintain full right to such an one of so much land with its appurtenances in such a vill, which so-and-so deprives him of, lest any longer &c. Witness &c. But if a burgage tenancy be claimed, then thus. ^{A writ to the bailiffs of manors according to the custom of the manor.}

The king to his bailiffs of such a borough greeting. ^{f. 329.}
 We enjoin you that you maintain full right to A. of such a vill of a messuage with its appurtenances in such a vill, which he claims to hold of us by a free service of so much for the year for all service, either as a free burgage tenure or a free maritage for all service, which so-and-so deprives him of, and unless &c. Witness &c. There is also a writ of right of another kind, which is directed to the heir of any one, under the name of the woman who has had part of her dower whether more or less, which is of this tenor. ^{7. A writ to the bailiffs of a borough.}

The king to such an heir greeting. We enjoin you that without delay you maintain full right to such a woman of the third part of so much land or its revenue, or of so much wood or meadow, or of one or of two or of so many messuages with their appurtenances in such a vill, which she claims to be of her reasonable dower which accrues to her from a free tenement, which belonged to so-and-so formerly her husband in the same vill, or in another vill, and to hold of you by a free service as above. But if the dower which is claimed ought to be defended under the service of the dower which is held by her, then thus: which she claims to pertain to her free tenement, which she holds from you as dower in the same vill or in another by such a service; or thus, which she claims to hold from you as her dower by such a service. There is likewise a writ of right of another kind concerning customs and services, which is addressed immediately to the ^{8. A writ of right concerning dower, where a woman has had part.}

gitur vicecomiti, ubi tenens ſvitium ſuū dedixerit in parte vel in toto, quod tale est.

Rex vic. salutem. Præcipe tali, q̄ juſtè & ſine dilatione¹ faciat tali conſuetudines & recta ſvitia, quæ ei facere debet de libero teneñto quod de eo tenet in tali villa, & niſi fecerit, & idem talis fecerit te ſecurū &c. tunc ſūmoneas p̄ bonos ſūmonitores &c. q̄ ſit corā juſtic' noſtris ad primā aſſiſam, cū in partes illas venerint, oſtensurus quare non fecerit. Et habeas &c. Teſte &c. De ſvitio vero q̄ quis cognoverit, ſi illud facere aliquādo contradixerit, dirigitur tale breve vic' de juſtitiando eum, q̄ dicitur breve de recto, in hac forma: Rex vic' salutem. Præcipimus tibi, quòd juſtities talem, q̄ juſtè & ſine dilatione faciat tali conſuetudines & recta ſvitia, quæ ei facere debet de libero teneñto ſuo quod de eo tenet in tali villa, ut in homagiis, releviis, redditibus, arreragiis & aliis, ſicut rationabiliter monſtrare poterit quod ei facere debeat, ne ampliùs inde clamorem audiamus p̄ defectu juſtitiae. Teſte &c. Si autem tenementum fuerit in burgo, tunc dicatur ſic: Quod talis faciat tali recta ſvitia, nulla tamen fiat mentio de conſuetudinibus.

CAP. III.

1.
Qualiter
placita
trans-
feruntur a
curia do-
minorum
uſque ad
comitatum.

Conſtat ex præcedentib⁹ q̄ quædā ſunt bñia de recto ex ſupra nominatis quæ in curia dōinorū terminari debēt, & quæ aliquando p̄ defaultā dominorū, qui rectū tenere vel nolūt, vel non poſſunt, transferūt ad comitatū, & ibi multis modis terminari poterunt, niſi ita ſit

¹ "et recte," MS. Rawl. C. 160.

viscount, where the tenant has denied his service in whole or in part, which is of this kind.

The king to the viscount greeting. Enjoin so-and-so, that justly and without delay he do to such a person his customs and right services, which he ought to do to him in respect of the free tenement, which he holds of him in such a vill, and unless he do so, and if the said so-and-so has given you security &c., then summon him by good summoners &c., that he appear before our justiciaries at the first assise, when they shall have come into those parts, in order to show wherefore he has not done it. And have &c. Witness &c. But concerning a service which any one has acknowledged, if he has at any time refused to do it, a writ of this kind is directed to the viscount for enforcing justice against him, which is called a writ of right, in this form. The king to the viscount greeting. We enjoin you, that you enforce justice against so-and-so, that justly and without delay he do to so-and-so the customs and right services, which he ought to do for his free tenement, which he holds from him in such a vill, as in homages, reliefs, rents, arrears and other things, as he will be able reasonably to show that he ought to do to him, that we may not any longer hear a complaint thereof for failure of justice. Witness &c. But if the tenement be in a borough, then let it be stated in this manner: that so-and-so perform for such a person right services, but let no mention be made of customs.

9.
A writ of right concerning services and customs.

CHAPTER III.

It is clear from what precedes, that there are some writs of right out of those above-named, which ought to be determined in the lord's court, and which sometimes from the default of the lords, who are either unwilling or unable to maintain the right, are transferred to the county court, and may be there determined in many ways,

1.
How pleas are transferred from the lord's court to the county court.

f. 329 b.
Britton, vi.
ch. iv. § 3.

q tenens se posuerit in magnam assisam, vel q dominus rex (ad instantiam petentis, & aliquando ad instantiam tenentis, sed ex justa causa) velit q loquela ad curiā suam a comitatu transfertur,¹ ideò per ordinem erit incipiendum à curiis dominorum, ubi ipsi doñ quandoque curiam tenent & quandoque eorum ballivi, ut si ipse petens tenere clamaverit de aliquo per liberum servitium, qui velit & possit loquelam in curia sua deducere & placitare & terminare per duellum, vel alio modo, qui quidem si nolit, vel non possit multis de causis, vel ppter impotentiam, vel ppter aliquam dubitationem emergentem, vel incidentem: & ita quòd curia sua de recto tenendo petenti deficiat, tunc ritè pbata defalta per defaltam recti in curia doñ capitalis, vicecomes rectum teneat per verba in brevi cõtenta (si non feceris vic' hoc faciat).

2.
Quod pluribus modis possit curia domini deficere.
Britton, ib.
§ 4.
Fleta, 375.

Poterit quidem curia de recto tenendo deficere multis modis, ut si deforcians tenuerit de aliquo alio quàm de eo, de quo petens tenere clamaverit, quia in hoc casu non habet dominus capitalis coercionem, per quam deforciantē trahere possit ad curiam suam, propter quod de necessitate erit ad comitatū recurrendum. Item quia capitalis dominus omninò recusat tenere rectum, vel cùm nemo sit vel inveniatur in curia, qui rectum teneat, vel quia ipse dominus nullam curiam habet, nec erit (ut videtur) ad superiores dominos capitales, præterquam ad comitatum, recurrendum, cùm in brevi contineatur, quòd si talis nominatus non fecerit q vic' immediatè se intromittat Item propter impotentiam domini capitalis, ut si warrantus vocetur, qui sit manens extra potestatem suam, vel fortè deforcians alibi se essoniaverit de malo lecti, quàm infra

¹ "transferatur," MS. Rawl. C. 160.

unless it be that the tenant has put himself upon a great assise, or that the lord the king (at the instance of the claimant and sometimes at the instance of the tenant, but for a just cause) wills that the argument be transferred from the county court to his own court ; therefore we will begin from the courts of the lords where the lords themselves sometimes hold the court, and sometimes their bailiffs, as if the claimant has claimed to hold from a certain person by a free service, who is willing and is able to bring the argument into his own court and to plead and to determine it by battle or in some other manner, who indeed, if he be unwilling or be unable for many reasons, either on account of his want of power, or on account of some doubt emergent or incident, and so that his court fails in maintaining the right to the claimant, then the default having been duly proved, through the default of right in the court of the chief lord, let the viscount maintain the right through the words contained in the writ (if you will not do it, let the viscount do it). f. 329 b.

The court indeed may fail in keeping the right in many ways, as if the disturber has held from somebody else than the person from whom the claimant claims to hold, because in this case the chief lord has no coercion by which he can drag the disturber into his court, on account whereof recourse must be had of necessity to the county court. Likewise because the chief lord altogether refuses to maintain the right, or when there is no one nor can any one be found in the court to maintain the right, or because the lord himself has no court, nor shall recourse (as it seems) be had to superior chief lords, but to the county, since it is contained in the writ, that if the party named shall not do justice, the viscount shall immediately intervene. Likewise on account of the want of power of the chief lord, as if a warrantor be called, who is resident beyond his jurisdiction, or by chance the disturber has essoined himself elsewhere on account of bed-sickness than within the power of the lord, and so 2. That the lord's court may fail in many ways.

potestatem domini sui, & ita quod milites mittere non possit, licet dominus. Rex faciat hoc aliquando per breve suum. Item si tenens posuerit se in magnam assisam, & aliæ sunt causæ infinitæ. Et si dominus capitalis rectum tenere inceperit, & postea obierit, licet hæres suus infra ætatem extiterit, propter hoc non cadit breve, quia curia iudicabit.

3. De summonitionibus vero ad curiam capitalis domini faciendis, quæ esse debeant, vel quot sursisæ, vel quot essoñ fieri, nolo inserere¹ huic tractatui propter diversas consuetudines, quæ in diversis curiis diversimodè observantur. Sed sciendum quod in visu petendo, & in warranto vocando, aliquando & in exceptionibus proponendis, & in duellis vadiandis, & in omnibus aliis quæ in curia dominorum terminari possunt & debent, observari debent prout in curia regia observantur.

De summonitionibus et modo procedendi in curia regis. Glanville, ii. c. 12. Fleta, 376. Britton, ib. § 5.

CAP. IV.

1. Cum autem ita sit quod dominus capitalis rectum tenere nolit, vel non possit, & curia sua ita de recto defecerit, videndum erit qualiter defalta pbari possit, & debeat, ita quod loquela ad communi transferat, & tunc quando loquela incipit esse in communi, & usque ad quod tempus dominus capitalis curiam suam petere possit, cum forte de recto non defecerit. Post defaltam curiæ domini capitalis, statim ad comitatum accedat petens & ostendat ibi quod curia domini sui ei defecerit de recto, & (secundum quosdam) vadiata probatione defaltæ in manum servientis domini regis, vice dicat servienti domini regis, quod assumptus secum pbari &

Qualiter defalta recti in capitali domino debeat probari in curia regis. f. 330.

¹ "inserere," MS. Rawl. C. 160.

that he cannot send knights (to examine his condition) although he is the lord. The king may do this sometimes by his writ. Likewise if the tenant has put himself upon a great assise, and there are other infinite causes. And if the chief lord has begun to maintain the right and has afterwards died, although his heir may have been under age, the writ does not abate on this account, because the court will judge.

But concerning the making of summonses to the court of the chief lord, what they ought to be, and how many adjournments and how many essoins there ought to be, I am unwilling to insert in this treatise on account of the diverse customs which are observed in diverse manners in diverse courts. But it is to be known in claiming a view, and in calling a warrantor, sometimes also in propounding exceptions and in wagering battle, and in all other things which may and ought to be determined in the court of the lord, the rules ought to be observed as they are observed in the court of the king.

3.
Of summonses and the mode of proceeding in the court of the lord the king.

CHAPTER IV.

But when it shall so happen that the chief lord is unwilling or is unable to maintain the right, and his court shall have made default of the right, it will have to be seen in what manner the default may and ought to be proved, so that the trial should be transferred to the county court, and then at what time the trial begins to be in the county court, and up to what time the chief lord may claim his court, when perchance it shall not have made default. After the default of the court of the chief lord let the claimant forthwith apply to the county court, and show there that the court of his lord has made default to him of right, and according to some the proof of the default having been wagered into the hand of the serjeant of the lord the king, let the viscount say to the serjeant of the lord the king, that having

1.
In what manner the default of right in the court of the chief lord ought to be proved in the court of the king.

f. 330.

Britton, *ib.* legalibus hominibus, statim accedat ad curiā illius dom̃ capitalis, si curiam habuerit & curiā tenuerit, vel si curiam nō habuerit, tunc ad locū ubi habuerit reseātiam,¹ dum tamē hoc sit in feodo illo, ubi terra illa est quæ petitur, & si nihil horum habuerit vel fecerit, tunc sufficit q̃ defaltā p̃bet quo loco voluerit super feodum illud, secundū quod ipse dom̃ electionē habuerit tenendi curiam suā quo loco voluerit sup feodum suū (cū extra nō liceat de jure) & videat serviens si curia petēti defecerit de recto, q̃ ipse ei rectū tenere noluerit vel non possit, & statim p̃ juramētū ipsius petentis, & aliorū duorū quos petens secū habuerit, audiat serviens p̃bationē defaltæ in p̃sentia capitalis dom̃, si interesse voluerit p̃ se, vel p̃ certum attornatū, senescallū, vel aliū ballivum; secund' quod inveniri poterit de termino P. & S. T. aāo regis H. tertio in com̃ Surrey de Gylberf de Albyngewerth & Reginaldo de Brewese. Qui quidē si suāmonitus interesse noluerit, nihilominus p̃cedat p̃batio, & p̃bata defalta, ut p̃dictum est, redire debent ad com̃ tam petens quā serviens. Et s̃viente (qui in hoc recordum habet) p̃bationem defaltæ attestante, tunc petat petens inde iudicium, & ibi per iudicium p̃cipietur, q̃ tenens suāmonetur q̃ sit ad alium com̃ inde petenti responsurus. Ad quem diem si uterq̃ comparuerit, p̃cedat loquela, si autem neuter, sed se essoniaverit, dabitur alius dies per essoñ, & idem erit si de altero ipsorum. Si autem nullus, vacua erit loquela, quamvis videatur q̃ compensari de-

¹ "reseantisam," MS. Rawl. C. 160.

assumed with himself honest and loyal men, he should forthwith apply to the court of the chief lord, if he have a court and has held a court, or if he have not a court, then to the place where he shall have had a residence, provided this be in that fee, where the land is which is claimed, and if he shall not have any of these, nor has done any of these things, then it is sufficient that he prove the default in whatever place he pleases upon that fee, according as the lord himself has had the choice of holding his court in whatever place he pleases upon that fee (since it is not of right allowable beyond it), and let the serjeant see if the court has made default to the claimant concerning the right, so that the lord has been unwilling or unable to maintain the right to him, and forthwith by the oath of the claimant himself, and two others whom the claimant has produced with himself, let the serjeant hear the proof of the default in the presence of the chief lord, if he wishes to be present in person or by a certain attorney, seneschal, or other bailiff, according to what may be found in Easter term and in Holy Trinity term in the third year of king Henry, in the county of Surrey, concerning Gylbert de Albyngewerth and Reginald de Brewese. Who indeed if on having been summoned he is unwilling to appear, nevertheless let the proof proceed, and on the default having been proved, as said above, both the claimant and the serjeant ought to return to the county court. And the serjeant (who has a record in this matter) attesting the proof of the default, then let the claimant seek judgment thereupon, and there it shall be enjoined by the judgment, that the tenant be summoned to be present at another county court in order to make answer thereon to the claimant. At which day if both appear, let the argument proceed, but if one of them does not appear, and he has essoined himself, another day shall be granted through the essoin, and it shall be the same in the case of either one of them. But if no one appears, then the argument will be void,

Consue-
tudo
Lancast̃r.

beat defalta cū defalta, ex quo tenens quietus per iudicium non recessit. Si autem petente comparente tenens non comparuerit, præsentibus summonitoribus, & summonitiones testificantibus, pcedatur contra ipsum ad defaltam, secundum diversam cōsuetudinem diversorum comitatuū, vel p captionem terræ in manum domini regis, vel alio modo. Et secundum q in comitatu Lancast̃r observatur, & quæ consuetudo ab M. de P. commendata fuit & approbata, & quæ talis fuit: quod si tenens ad primam summonitionem non veniret, tunc præsentibus summonitoribus & summonitionem testificantibus, per considerationem comitatus sumoneatur secundò, q sit ad alium comitatum, ad quem si non venerit præsentibus summonitoribus &c. ut prius, p cōsiderationem comitatus capiatur parvum nāpium de eadem terra nomine districtionis, & tenens sumoneatur tertio, q sit ad tertium comitatum, ad quem si non venerit, capiatur magnum nampium de eadem terra, scilicet averia & catalla in duplum pro aforciamiento districtionis, & tenens quarto sumoneatur quòd sit ad quartum com̃, ad quem si non venerit, per cōsiderationem com̃ capietur terra in manum domini regis, & tenens quinto sumoneatur, q sit ad quintum com̃, ad quem si non venerit, nec terra petita sit p plevinā, petens seysinā suā recuperabit p defaltā, nec poterit tenens se defendere contra recordum com̃ per legem, defendendo summonitionem & sursisas.

2.
De pro-
cessu in
comitatu

Fit etiam processus huiusmodi post defaltam probatam pluribus aliis modis & diversis, secundum diversitatem comitatum, quia post probationem defaltæ,

although it would seem that the default of one ought to be compensated by the default of the other, since the tenant has not gone away acquitted by the judgment. But if upon the claimant appearing the tenant has not appeared, the summoners being present and attesting their summonses, let proceedings go on against him by default according to the different custom of different counties, either by the taking of his land into the hand of the lord the king, or in some other manner. And according to what is observed in the county of Lancaster, and which was commended and approved by Martin de Pateshull, and which was of this kind, that if the tenant did not come at the first summons, then upon the summoners being present and attesting the summons, upon a resolution of the county court let him be summoned a second time, that he attend at another county court, at which if he be not present the summoners being present &c. as before, upon a resolution of the county court let a little naam be taken of the same land in the name of a distress, and let the tenant be summoned a third time that he be present at a third county court, at which if he be not present, then let a great naam be taken of the same land, to wit, beasts and chattels to a double amount to enforce the distress, and let the tenant be summoned a fourth time that he be present at a fourth county court, at which if he be not present, upon a resolution of the court his land shall be taken into the hand of the king and let the tenant be summoned a fifth time, that he be present at a fifth county court, at which if he be not present, and the land be not claimed by a plevine, the claimant shall recover his seysine by default, nor can the tenant defend himself against the record of the county court by his law, by denying the summonses and the adjournments.

A proceeding of this kind is had after the default has been proved in several and divers other ways according to the diversity of the counties, because after proof of the

2.
Of the proceeding in the county

f. 330 b. faciet serviens hundredi incontinenti suūmonitionē vel
 post defaltam curiæ assidet partibus diū (si præsenti fuerint) ad proximū comū,
 probatam. & semp stabit ejus recordo cum testimonio pborum
 Britton, vi. hominum qui p̄sentes fuerint, & de suūmonitione facta,
 ch. iv. § ii. & die dato, & ad quem si tenens non venerit, se p
 legem non defendet contra recordum servientis. Sta-
 bitur etiam ejus recordo, si in curia regis contentio
 habeatur, utrū loquela fuerit in curia capitalis domini,
 vel in comitatū, vel si facta fuerit p eum suūmonitio vel
 non, ut de itinere W. de Ralegh in comū Warī.

3. Et quamvis quidam sic dicant, q statim post suū-
 Quando loquela incipit esse in comi-
 tationem factam p ūvientem, incipit loquela esse in
 comitatu, tamen non est ita, nisi tunc demū cum
 serviens presens fuerit in comitatū & testatus fuerit pba-
 tionem defaltæ & summonitionē, & cum ita fuerit
 loquela in comū, sine calumnia domini capitalis, sive
 tenens se essoniaverit sive non, capitalis dominus curiam
 suam nunquam rehabebit, sive tenens in comū se esso-
 niaverit sive non. Ex tunc enim vel statim poterit
 loquela ad magnā curiam dom̄ regis p pone transferri,
 vel in comū terminari, & unde, cū multotiens contin-
 gat, q petens per fraudem dicit q curia de recto ei
 defecerit, cū fortē loquela nunquā fuerit in curia dom̄
 capitalis, & cū ipse dom̄ paratus esset ei rectum
 tenere, ipse petens ad comitatū convolvit. Et quo pbato
 esset curia domino capitali restituenda, si illam ad
 horam petierit, oportet q illam petat hora congrua,

default, the serjeant of the hundred shall make forthwith f. 330 b.
 a summons or shall assign to the parties a day (if they court after
 be present) at the next county court, and reliance shall proof of
 always be placed on his record with the testimony of the default
 honest men who were present, both concerning the sum- of the
 mons having made and a day assigned, and upon which lord's
 day if the tenant has not come, he shall not defend him- court.
 self by his law against the record of the serjeant. Re-
 liance shall also be placed on his record, if the contention
 is held in the court of the king, whether the argument
 has been in the court of the chief lord, or in the county
 court, or whether or not a summons has been made by
 him, as in the iter of William de Ralegh in the county
 of Warwick.

And although some persons say thus, that immediately 3.
 after the summons has been made by the serjeant, the When the
 argument begins to take place in the county court, never- argument
 theless it is not so, unless then indeed when the serjeant commences
 is present in the county court and has attested the proof to be in
 of the default and the summons, and when thus there the county
 has been an argument in the county court, without any court.
 charge against the chief lord, whether the tenant has
 essoined himself or not, the chief lord shall never have
 again his court, whether the tenant has essoined himself
 or not. For from that time either the argument may be
 transferred by a *pone* to the great court of the lord the
 king, or be determined in the county court, and hence
 when it oftentimes happens that the claimant fraudu-
 lently declares that the court has failed him in a plea of
 right, when perhaps there has never been an argument
 in the court of the chief lord, and when the lord himself
 was prepared to maintain his right, the claimant himself
 has hastily had recourse to the county court. And upon
 proof of this the court will have to be restored to the
 chief lord, if he has claimed it at the proper hour, and
 it is incumbent that he claim it at a suitable hour, before
 there has been an argument in the county court, to wit,

G 2

antequam loquela fuerit in comitaſ, ſcilicet tertio die incluſivè, ne ſi diem cõ attenderet, ſuperveniret ptes-tatio pbatõnis defaltæ, & ſummonitionis per recordum ſervientis, vel eſſonium tenentis, & poſtea breve de ponendo loquelam ad magnam curiam, quia ſic non eſſet curia petita ad horam.

CAP. V.

1. Probata ſic defalta & per ſervientem teſtata, & ſimi-
Cum lo-
quela fuit
in comita-
tum trans-
lata. liter ſummonitione, ſic incipit placitum de recto eſſe
 in comitatu, & ubi in eſſoñ de malo veniendi ita fieri
 debet ſicut fit in curia domini regis, niſi ex conſuetu-
 dine & ex jure antiquo aliter obſervetur.

2. De eſſonio vero de malo lecti ita fiat, ſecundum quod
De modo
procedendi
in placito
de recto
f. 331.
cum fuerit
in comi-
tatu, et de
forma
diversorum
brevium. inferius videri poterit de eſſoniis, ſi in comitatu. De
 viſu vero habendo & de exceptionibus, & replicationi-
 bus, fiat ſicut inferiùs dicitur, & eodem modo. Si
 autem vocetur warrantus in comitatu, non habebit
 comitatus poteſtatem ſumõnendi warrantum ad war-
 rantizandum ſine ſpeciali præcepto doñ regis, quo caſu
 recurrendum erit ad curiam p breve de warrantia, quod
 tale erit.

3. Rex vicecõ ſalutem. Præcipe tali, q juſtè &c. war-
Si in comi-
tatu voce-
tur waran-
tus. rantizet tali tantā terrā cum ptinentiis in tali villa,
 quam talis Titius in curia noſtra clamat eſſe juſ ſuum,
 & unde &c. ut infra inter brevia de warrantia. Et
 niſi fecerit, q ſit in adventu juſtic' &c. & unde ſi in
 comitatu warrantizaverit, bene erit, ſi autem non, tunc
 dabitur dies partibus in adventu juſticiariorum, ubi

on the third day inclusively, lest if he wait for the day of the county court, there should arrive a protestation of the proof of the default, and of the summons by the record of the serjeant, or an essoin of the tenant, and afterwards the writ of transferring the argument to the great court, because so the court would not have been claimed at the proper hour.

CHAPTER V.

The default having been thus proved and attested by the serjeant, and in like manner the summons, the plea of right then begins to be in the county court, and where in an essoin of sickness on the way it ought to be done just as it is done in the court of the lord the king, unless from custom and ancient right it is otherwise observed. 1. When the argument has been transferred to the county court.

But concerning an essoin of bed-sickness let it be done according to what may be seen below concerning essoins, if it be in the county court. But concerning holding a view and concerning exceptions and replications, let it be done as will be explained below, and in the same manner. But if a warrantor should be called in the county court, the county court shall not have the power of summoning a warrantor to warrant without a special precept from the lord the king, in which case recourse must be had to the court by a writ of warranty, of which the form shall be such. 2. Of the mode of proceeding in a plea of right, when it has been in the county court, and of the form of diverse writs.

The king to the viscount greeting. Enjoin so-and-so, that justly &c. he warrant to such an one so much land with its appurtenances in such a vill, which a certain Titius in our court claims to be his right, and whereof &c. as below amongst writs of warranty. And unless he do so, that he should be present at the arrival of our justiciaries, &c., and whereof if he has warranted in our court, it shall be well; but if not, then a day shall be given to the parties at the arrival of our justiciaries, 3. If a warrantor be called in the county court.

terminabitur p tale bñe placitū de warrantia, & cūm warrātizaverit, remittetur loquela principalis iterū ad coñ, & ibi terminabitur, si justiciarii hoc voluerint. Poterit tamē utraqū corā eis de gratia terminari, si voluerint, etiam sine pone. Et si warrantus infra ætatem fuerit, remanebit principale placitum in suspenso in comitatu & placitum de warrantia coram justiciariis, quousque warrantus ætatem habuerit, q ad warrantiam respondere poterit.

4.
Si tenens
se posuerit
in magnam
assisam in
comitatu.

Si autem tenens p duellum in comitatu se defendere voluerit, tunc fiat eodem modo in essoniis & aliis, sicut fit infra de duellis. Cū autē tenens se posuerit in magnā assisam in comitatu, dabitur ei dies usq ad alium comitatū, infra quem sibi pquirere debet breve de pace usq ad adventum justiciariorum, quod quidem facere non possit p interpositam personam, cū in ppria persona jurare teneatur q tenens est, & q se in comitatu posuerit in assisam, q si infra comitatum sibi non perquisiverit, vel essoniatus non fuerit, sed defaultam fecerit, amittere poterit p defaultā, salvo ei quod habeat recuperare suū, quale habere debebit. Et eodem modo faciat petens ex parte sua, perquirat sibi breve de summonendo magnam assisam coram justiciariis ad eundem terminum, secundum q inferiūs dicitur.

5.
Breve de
pace usque
ad adven-
tum jus-
ticiariorum.

Rex vicecoñ salutem. Prohibemus tibi, ne teneas placitum quod est in comitatu tuo inter A. petentem & B. tenentē de tanto terræ cum ptinentiis in N. quod idem A. clamat versus prædictum B. p breve nostrum de recto, nisi duellum inde fuerit vadiatum, quia idem

when the plea of warranty shall be determined by such a writ, and when he has warranted, the principal argument shall be remitted again to the county court, and there shall be determined, if the justiciaries so will. But both pleas may be determined by favour before them, if they are willing, even without a *pone*. And if the warrantor be under age, the principal plea shall remain in suspense in the county court and the plea of warranty before our justiciaries, until the warrantor has full age, so that he may be able to answer to the warranty.

But if the tenant is desirous to defend himself by battle in the county court, then let it be done in the same manner in the essoins and other matters, as is done below concerning battle. But when the tenant has put himself upon a great assise in the county court, a day shall be granted to him until another county court, within which he ought to procure for himself a writ of peace until the coming of the justiciaries, which indeed he cannot do through the interposition of a person, since he is bound to swear in his own person that he is the tenant, and that he has in the county court put himself upon an assise, but if within the county court he has not procured for himself a writ, or has not been essoined, but has made default, he may lose by default, saving to him that he should have his recovery such as he ought to have. And in the same way let the claimant do of his own part, let him procure for himself a writ of summoning a great assise before the justiciaries for the same term according to what shall be said below.

The king to the viscount greeting. We prohibit you, that you should not hold a plea, which is in your county court, between A. the claimant and B. the tenant concerning so much land with its appurtenances in N. which the said A. claims against the aforesaid B. by our writ of right, unless battle has been waged thereon, because

4.
If the tenant has put himself upon a great assise in the county court.

5.
A writ of peace until the coming of the justiciaries.

B. (qui tenens est) posuit se in magnam assisam nostram, & petit recognitionem fieri uter eorum majus jus habeat in terra illa. Et sic fiat de omnibus aliis assisis, secundum quod videri poterit in magnis assisis inferioribus. Si autem placitū de recto fuerit in curia alicujus, tunc fiat phibitio custodi, vel ballivo, p tale breve.

6.
Prohibitio
custodi.

Rex vicecoñ salutem. Prohibe ballivo, vel custodi terræ & hæredis A. ne teneat placitū, quod est in curia ejusdē custodis, vel ballivi de tali honore &c. ut supra. Vel si phibitio fieri debeat doñ curiæ, tunc sic. Prohibe A. ne teneat placitum in curia sua inter A. petentem & B. tenentē de tanto terræ cum ptinētiis in N. quod idē A. clamat versus eundem B. p breve nostrum de recto &c. Si autem placitum fuerit inter aliquos in comitatu de servitiis & consuetudinibus per breve de recto patens, quod dicitur, prohibemus; vel per breve de justiciando aliquem ad faciendum recta servitia & consuetudines, & tenens se posuerit in magnā assisam (q bene poterit) habebit breve de pace vicecoñ quod tale erit.

f. 381 b.

7.
Si placitum
fuerit in
comitatu de
consuetu-
dinibus et
servitiis.

Rex vicecomiti salutem. Prohibemus tibi, ne teneas placitum quod est in comitatu tuo inter A. petentem, & B. tenentē vel defortiantē, de cōsuetudinibus & s̄vitiis quæ prædictus A. exigit de p̄dicto B., per breve nostrum de tanto terræ cum pertinentiis in tali villa, nisi duellum inde vadiatum fuerit, quia idem B. (qui tenens est) posuit se in magnā assisam nostram, & petiit recognitionem fieri utrum debeat p̄dicto A. de p̄dicto teñto tale s̄vitium & tale tantum per añum pro omni s̄vitio sicut ei recognoscit: an idem servitium, & p̄te rea tale, & tale, sicut idem A. ab eo exigit. Teste &c.

the said B. (who is the tenant) has put himself upon our great assise, and prays a recognition to be made which of them has the greater right in that land. And let it be thus done with all other assises, according to what may be seen in great assises below. But if there be a plea of right in any person's court, then let there be a prohibition to the guardian or the bailiff by a writ of this kind.

The king to the viscount greeting. Prohibit the bailiff or the guardian of the land and the heir of A. from holding a plea, which is in the court of the said guardian or bailiff, concerning such an honour &c. as above. Or if the prohibition ought to be issued against the lord of the court, then thus: Prohibit A. not to hold a plea in his court between A. a claimant, and B. a tenant, concerning right &c. But if there be a plea between certain persons in the county court concerning services and customs by an open writ of right, which is called "prohibemus," or by a writ to adjudge some one to perform rightful services and customs, and the tenant has put himself on a great assise (which he may well do), he shall have a writ of peace to the viscount of this kind. 6.
A prohibition to a guardian.

f. 331 b.

The king to the viscount greeting. We prohibit you from holding a plea, which is in your county court, between A. the claimant and B. the tenant or disturber, concerning customs and services, which the aforesaid A. exacts from the aforesaid B., by our writ concerning so much land with its appurtenances in such a vill, unless battle has been waged thereon, because the said B. (who is the tenant) has put himself upon our great assise, and has prayed a recognition to be made whether he owes to the aforesaid A. from the aforesaid tenement such a service and such only yearly for all service as he acknowledges to him, or the same service and in addition such and such service, as the said A. exacts from 7.
If there be a plea in the county court concerning customs and services.

Et variat istud breve multotiens secundum varietatem ſvitiſſorum. Contingit quandoq̃ q̃ ille qui ſe poſuerit in magnam aſſiſam de ſvitiſſis & conſuetudinibus, poſtquā ſibi p̃quiſiverit breve de pace uſquē ad adventū juſticiariſſorum, interim nihilominūſ diſtringitur pro eiſdem ſervitiſſis per dominū capitalem, & quo caſu conſulitur ei per breve quod tale eſt.

8. Rex vicecomiti ſalutem. Oſtendit nobis talis, quōd cūm tulerit tibi breve noſtrum de pace habenda uſq̃ ad adventum juſticiariſſorum ad partes illas de ſvitiſſis & conſuetudinibus quas talis ab eo exigit, & quas ei non cognoscit, & unde poſuit ſe in magnam aſſiſam noſtram corā te in cōm tuo, idem talis nihilominūſ diſtringit cum pro eiſdem ſervitiſſis & conſuetudinibus quas ei non cognoscit, et in aliis gravis exiſtit eidem & injurioſus. Et ideo tibi p̃cipimus, q̃ non permittas de cætero quod p̃dictus talis diſtringat ipſum talem pro eiſdem ſervitiſſis et conſuetudinibus, ita q̃ p̃dictā occaſione de cætero ei moleſtiam inferat vel gravamen. Et ita te habeas in hoc negotio &c. Teſte &c.

9. Rex vicecomiti ſalutem. Prohibemus tibi ne teneas placitum, quod eſt in comitatu tuo inter talem et talem &c. ut ſupra, niſi duellum &c. quia idem talis qui tenēs eſt, poſuit ſe in juratā loco magnæ aſſiſæ p̃viſam et conſeſſā, et petiit recognitionem fieri uter eorum majus juſ habeat in terra illa. Teſte &c. Et notandum eſt quōd omnia brevia de pace ſic fiunt, ut ſupra: vel ſic: vel q̃ ſit phibitio vicecomiti ne teneat, vel vicecomiti quōd aliis prohibeat, ſicut dominis, cuſtodiſſibus, vel balliſſis, ne ipſe¹ teneant placitum quod eſt in curia eorum &c. ut ſupra. Et ſciendum q̃ omnia brevia de pace irrotulari debent in rotulo de cācellaria.

¹ "ipsi".MS. Rawl. C. 160.

him. Witness &c. And that writ varies in manifold ways according to the variety of the services. It happens sometimes that he, who has put himself upon a great assise concerning services and customs, after he has procured for himself a writ of peace until the coming of the justiciaries, is nevertheless in the meanwhile distrained for the same services by the chief lord, in which case he is aided through a writ, which is of this kind.

The king to the viscount greeting. So-and-so has shown to us, that when he has delivered to you our writ for keeping the peace until the coming of our justiciaries to those parts, concerning the services and the customs which so-and-so exacts from him, and which he does not acknowledge to him, and in other respects aggrieves and injures him. And therefore we enjoin you that you do not permit henceforth that so-and-so aforesaid should distrain the said such-an-one for the same services and customs, so that on the aforesaid pretext he should henceforth cause him trouble and grievance. And so conduct yourself in this business &c. Witness &c.

8.
If he, who has put himself upon a great assise concerning customs and services, and has had a writ of peace, is distrained by his lord, pending the plea.

The King to the Viscount greeting. We prohibit you to hold a plea, which is in your county court, between so-and-so and so-and-so, &c. as above, unless battle &c., because the said so-and-so, who is the tenant, has put himself upon a jury provided and conceded to him in the place of a great assise, and has prayed a recognition to be made which of the two has the greater right in that land. Witness &c. And it is to be noted that all writs of peace are to be drawn up as above, or thus: either that there be a prohibition to the viscount not to hold, or to the viscount that he prohibit others, such as lords, guardians, or bailiffs, that they should not hold a plea which is in their court &c. as above. And it is to be known that all writs of peace ought to be enrolled in roll of the chancery.

9.
A writ of peace, when the land claimed ought to be held in gavelkind.

10. Cùm autem tenens hujusmodi breve de pace sibi perquisiverit, statim debet petens aliud sibi perquirere, scilicet de magna assisa coram justiciariis in eorum adventu arramanda, & per quod summoneantur quatuor milites ad eligendum duodecim ad faciendam assisam illam, in hac forma.

Rex vicecomiti salutem. Summoneas per bonos summonitores quatuor legales milites de comitatu tuo, quòd sint coram justiciariis nostris ad primam assisam cùm in partes illas venerint, ad eligendum super sacramentum suum duodecim de legalioribus militibus de visneto tali, qui meliùs sciant & velint veritatem dicere, ad faciendam recognitionē magnæ assisæ nostræ inter talē petentem & talem tenentem, de tanto terræ cum pertinentiis in tali villa, quia idem talis (qui tenens est) posuit se in magnā assisam nostram, & petit recognitionem fieri uter eorum majus jus habeat in terram illam. Et summoneas p bonos summonitores p̄dictum talem &c. quòd tunc sit ibi auditurus illam electionem, & habeas ibi nomina militum & hoc breve. Teste &c. Et sciendum q variantur hujusmodi brevia secundū varietatem assisarum, secundum q videri poterit infra de assisis.

11. Breve de eodem de assisa arramanda.

f. 332.

12. Rex vicecoñ salutem. Summoneas per bonos summonitores quatuor legales milites de comitatu tuo &c. ut supra, ad faciend' recognitionem magnæ assisæ nostræ inter A. petentem & B. deforciantem de consuetudinibus & švitiis quæ idem A. exigit à p̄dicto B. de tanto terræ cum pertinentiis in tali villa. Et unde idem B. (qui tenens est) posuit se in magnam assisam nostram, & petiit recognitionem fieri utrum debeat p̄dicto A. de p̄dicta terra tale švitium, vel tale¹ tantum per añum p omni švitio sicut ei recognoscit, an idem servitium,

De assisa arramanda, cum placitum de recto fuerit de servitiis et consuetudinibus.

¹ "et tale," MS. Rawl. C. 160.

But when the tenant has procured for himself a writ of peace, the claimant should forthwith procure for himself another writ, to wit, about preparing a great assise before the justiciaries at their coming, and through which four knights should be summoned to elect twelve knights to make that assise in this form :

10.
That when the tenant, who has put himself upon a great assise, has obtained a writ of peace, the claimant should procure for himself a writ to prepare a great assise before the justiciaries at their coming.

The king to the viscount greeting. Summon by good summoners four lawful knights of your county, that they attend before our justiciaries at their first assise, when they have come into those parts, to choose upon their oath twelve of the more loyal knights of that neighbourhood, who know well and can speak the truth, to make a recognition of our great assise between so-and-so the claimant and so-and-so the tenant concerning so much land with its appurtenances in such a vill, because the said so-and-so (who is the tenant) has put himself upon our great assise, and prays a recognition to be made which of them has the greater right to that land. And summon by good summoners so -and-so aforesaid, &c., that he be there in order to hear that election, and have there the names of the knights and this writ. Witness &c. And it is to be known that writs of this kind are varied according to the varieties of the assises, according to what may be seen below concerning assises.

11.
A writ concerning the same for preparing a great assise.

f. 332.

The king to the viscount greeting. Summon by good summoners four loyal knights of your county &c., as above, to make a recognition of our great assise between A. the claimant and B. disturbing him from certain customs and services, which the said A. exacts from the aforesaid B. concerning so much land with its appurtenances in such a vill. And whereon the said B. (who is the tenant) has put himself upon our great assise, and has prayed a recognition to be made whether he owes to the aforesaid A. from the aforesaid land such a service and such only yearly for all services as he acknowledges to

12.
Of preparing an assise, when the plea of right shall be concerning services and customs.

& p̄terea tantū, sicut idem A. ab eo exigit. Et sum-
moneas &c. ut supra.

13. Rex vicecoñ salutem. Sumoneas &c. quatuor legales
Breve de assisa homines de coñ tuo qui teneant in gavelkynd, q̄ sint
arramanda corā justiciariis nostris &c. (ut supra) ad eligend' super
in jurata sacramentum suum xii. de legalioribus hominibus de
de gavel- kynde loco visneto tali, qui teneant in gavelkynd, et qui meliūs
magnæ sciant et velint veritatem dicere, ad faciendā juratam
assisæ. loco magnæ assisam p̄visam et concessam, inter tales
&c. ut supra. Et sumoneas &c. et habeas &c.

14. Et tali modo p̄cedat placitum de recto in coñ, nisi
Qualiter removetur placitum de comitatu ad magnam assisam
per breve, quod dicitur pone. forte sit aliquis capitalis dominus, ut p̄dictum est, qui
curiā suam ad horā petierit antequā placitum fuerit
in coñ, vel fortè cū in comitatu fuerit perquirat sibi
petens de ponendo loquelam illam ad magnam curiam
per breve q̄ vocatur (pone), et quod tenenti de facili
non conceditur, nisi ex causa necessaria in brevi ex-
primenda.

15. Rex vicecoñ salutem. Pone ad petitionē petent
Pone ad petitionem petentis. coram justiciariis nostris apud Westm̄ tali die loquelā,
quæ est in coñ tuo per breve de recto inter A. petentē
et B. tenentē de tanto terrē cum pertinētiis in tali
villa, vel sic: exceptis tot acris &c. Et sumoneas &c.
p̄dictum B. q̄ tunc sit ibi p̄fato A. inde responsurus,
et habeas ibi summonitores et hoc breve. Teste &c.

16. Rex vicecoñ salutem. Pone ad petitionem petētis
Pone ad petitionem tenentis de consuetudinibus et serviitiis. coram justiciariis nostris apud W. tali die loquelam
quæ est in comitatu tuo p̄ breve nostrum inter A.
petentem et B. deforciantem de consuetudinibus & svi-

him, or the said service and so much besides, as the said A. exacts from him. And summon &c. as above.

The king to the viscount greeting. Summon &c. four loyal men of your county, who hold in gavelkind, that they appear before our justiciaries &c. (as above) to choose upon their oath twelve of the more loyal men of such a neighbourhood, who hold in gavelkind, and who know well and are willing to say the truth, to make up a jury provided and conceded in the place of a great assise, between such and such persons &c. as above. And summon &c. and have &c.

13.
A writ for preparing an assise in a jury of gavelkind in the place of a great assise.

And in this way let a plea of right proceed in the county court, unless by chance there is some chief lord, as said above, who has claimed his court early before a plea has been admitted in the county court, or perchance when it has been admitted in the county court, the claimant has procured for himself a writ to remove the argument into the great court by a writ which is called a "Pone," and which is not allowed to the tenant easily, except from a cause of necessity, to be expressed in the writ.

14.
How a plea is removed from the county court to the great court by a writ, which is called a "pone."

The king to the viscount greeting. At the petition of the claimant put before our justiciaries at Westminster on such a day the argument, which is in your county court, by a writ of right between A. the claimant and B. the tenant, of so much land with its appurtenances in such a vill, or thus, excepting so many acres &c. And summon &c. the aforesaid B. that he be there to answer thereon to the aforesaid A., and have there the summoners and this writ. Witness &c.

15.
A "pone" at the prayer of the claimant.

The king to the viscount greeting. At the prayer of the claimant put before our justiciaries at Westminster on such a day the cause, which is in your county court by our writ between A. the plaintiff and B. who withholds from him customs and services, which the said A.

16.
A "pone" at the prayer of a claimant for customs and services.

tiis, quæ idem A. exigit de p̃dicto B. de libero teñto suo, quod de eo tenet in tali villa etc. Et summoneas etc. p̃fatum B. quòd tunc sit ibi præfato A. inde responsurus, et habeas ibi summonitores, et hoc breve et aliud breve. Teste etc. Et ideo dicit (aliud breve), ut si placitum fuerit in comitatu per aliquod breve clausum inter aliquos de debito, vel de alia re, et ita quòd non sit patens, et quod quidem remanere debet penes petentem. Sed esto, quòd tenens warrantum vocaverit in comitatu antequàm loquela posita fuerit coram justiciariis de banco, et ita quòd warrantus diē habeat coram justiciariis itinerantibus, quia statim ad p̃ceptum vicecomitis non warrantizavit, nunquā fiet mētio in pone de warrāto? Non, quia in curia dñi regis post essonia et dilationes incipiet petēs narrare versus tenētem, ex quo warrātus in comitatu nondum warrantizavit, & ipse tenēs tunc incipiat de novo warrantum vocare, & dies datus corā justic' itinerantibus nullus erit, & locum non tenebit. Raro autē fit hoc breve (pone) ad petitionem tenētis, ut prædictum est, nisi ex causa, quæ multiplex esse poterit, ut si tenens longè agens fuerit in partibus transmarinis, vel ita impotens sui q̃ comparere non possit in comitatu, vel vice versa, si petens sit vicecōm parentela conjunctus, sviens, vel multum familiaris, vel sit valde potens, & vicecomes de cōm, & fit tale (pone) sic cū causa expressa.

17. Rex vicecōm salutem. Pone ad petitionem tenentis, eo q̃ agit in partibus transmarinis, vel eo quòd petens est amicus, vel familiaris vicecomiti, & hujusmodi, coram justic' nostris ad talem diem loquelam quæ est

Pone ad
petitionem
tenentis et
ex causa.

requires from the said B. in respect of his free tenement, which he holds in such a vill &c., and summon &c. the aforesaid B. that he be there to answer thereon to the aforesaid A., and have there the summoners and this writ and any other writ. Witness &c. And for this reason it says "any other writ," that if there has been a plea in the county court by a close writ between some persons for debt or for some other matter, and so that it is not an open writ, and that it ought indeed to remain in the possession of the plaintiff. But let it be that the tenant has called a warrantor in the county court before the cause was put before the justiciaries of the bench, and so that the warrantor may have a day before the justiciaries itinerant, because he has not forthwith warranted at the precept of the viscount, shall mention of the warrantor never be made in the "Pone?" No, because in the court of the lord the king after the essoins and adjournments the claimant will begin to plead against the tenant, since the warrantor has not yet warranted in the county court, and let the tenant himself begin anew to call a warrantor, and the day given before the justiciaries itinerant shall be null and shall have no place. But this writ of "Pone" is seldom issued at the prayer of the tenant, as has been said above, except from a cause which may be of many kinds, as if the tenant has been long employed in parts beyond the sea, or so little master of himself that he cannot appear in the county court, or conversely if the claimant is connected by relationship to the viscount, or if he is his servant or a member of his household, or if he be very powerful and the viscount of the county, and let the "Pone" be of this kind with the cause expressed.

The king to the viscount greeting. At the prayer of the tenant, on the ground that he is employed in parts beyond the sea, or on the ground that the claimant is a friend or a member of the family of the viscount, and such like, put before our justiciaries on such a day the

17.
A "pone" at the prayer of the tenant and for a cause.

in comitatu tuo p breve nostrum de recto, inter A. petentem & B. tenentem de tanto terræ cum pertinentiis in tali villa. Et die prædicto A. q tunc sit ibi loquelam suam versus prædictum B. psecuturus, si voluerit. Et habeas ibi hoc breve. Teste &c. Et notandum, quòd si tenens quacunq̃ de causa pquisiverit suum (pone) coram justiciariis, & primo die coram eis defaltam fecerit, oportet eum wayvare¹ suum (pone) vel amittet p defaltam. Item esto q petens defaltam fecerit primo die cùm (pone) suum pquisiverit; & cùm tenēs se essoniaverit, recesserit essoniator sine die, non poterit petēs ulterius p aliud (pone) resumere placitum suum, & illud iterum transferre de comitatu ad magnam curiam, quia in comitatu nullum est placitum ex quo inde semel translatum est: ut de termini Paschæ año regni regis H. nono in coñ Hunī de Wilhelṃ Hatechrist & Roberto de Washingley.² Et unde idē Robert (qui tenēs fuit) recessit sine die de placito illo, quod translatum fuit a comitatu p secūdum pone, & ideo placitum de novo reincipiendum. Transfert etiam loquela ad magnam curiam ad petitionem petentis ex necessitate ppter privilegium tenētis, quale habēt Templarii, & Hospitalarii, & alii plures, q non respondeāt de aliquo placito, nisi corā ipso rege, vel ejus capitali justic', qui etsi aliquando contra privilegium suum intraverint in responsum, ex pœnitentia resilire non possunt; ut de itinere abbatis de Radyng & M. de Pateshul in coñ Wygorū año regni regis H. quinto. Transfertur etiam generaliter quælibet loquela de coñ per necessitatem, s. ubi comi-

Britton, vi.
ch. iv. § 17.

¹ "wayviare," MS. Rawl. C. 160.

² "Wassyngelgh," MS. Rawl. C. 160.

cause which is in your county court by our writ of right between A. the claimant and B. the tenant of so much land with its appurtenances in such a vill. And say to the aforesaid A. that he be there to prosecute his cause against the aforesaid B. if he wishes, and have there this writ. Witness &c. And it is to be noted, that if the tenant for any cause whatever has procured his "Pone" before the justiciaries, and on the first day has made default before them, he must waive his "Pone," or he shall lose it by his default. Likewise let it be that the claimant has made default on the first day when he has procured his "Pone," and when the tenant has essoined himself, the essoiner has withdrawn without a day, the claimant cannot further by another "Pone" resume his plea, and transfer it again from the county court to the great court, because in the county court a plea is null from the time when it has been once transferred from it, as in Easter term in the ninth year of the reign of king Henry in the county of Huntingdon, concerning William Hatechrist and Robert de Washingley. And wherefrom the said Robert (who was the tenant) withdrew without a day concerning the plea, which had been transferred from the county court by a second "Pone," and accordingly the plea had to be recommenced anew. The argument is also transferred to the great court of necessity at the prayer of the claimant on account of a privilege of the tenant, such as the Templars, the Hospitallers, and several others have, that they should not answer upon any plea, except before the king himself or his chief justiciary, who also, if on any occasion contrary to their privilege they have entered upon an answer, cannot, if they should repent it, draw back: as in the iter of the abbot of Reading and Martin de Pateshull in the county of Worcester, in the fifth year of the reign of king Henry. For generally any plea is transferred from the county court of necessity, to wit, where the county court has not the power

tatus non habet potestatem terminandi placitum, ut si bastardia objiciatur, vel hujusmodi, & eodem modo ppter difficultatem judic',¹ & multis aliis modis. Et eodem modo transferuntur loquelæ coram justitiar' itinerantibus &² indifferenter, absq̃ eo q̃ aliquid detur pro (pone). Et eodem modo de curiis baronū. Et in fine notandum, q̃ in placito per parvum breve de dominicis dom̃ regis nullum fiat (pone). Transfertur etiam loquela à com̃ ad curiam ppter falsum judiciū, vel fatuum.

18.
Ubi duellum vadiandum est contra consuetudinem regni.

f. 333.

Rex vicecom̃ salutē. Pone corā justitiar' nostris &c. duellū quod vadiatū est in com̃ tuo inter A. querētem & talia hundreda, de quodā juditio eidē A. facto, de averiis captis & cōtra vadiū & plegium detētis, ut idem A. dicit. Et unde queritur q̃ duellum istud injustē & cōtra cōsuetudinem regni nostri vadiatum est. Et interim recordum illud unde prædictum duellum vadiatum fuerit fieri facias, & illud habeas corā præfatis justitiariis nostris ad p̃dictum diem p̃ quatuor legales milites de com̃ tuo qui recordo illi interfuerint. Et sum̃oneas &c. quatuor legales milites de com̃ tuo, qui recordo illi interfuerint, & p̃terea quatuor legales milites de quolibet hundredorum p̃dictorum, qui tunc sint ibi audituri recordum illud, & responsuri, & judicium recepturi, p̃ p̃dictis hundredis. Et habeas ibi sum̃onitores, nomina militum, & hoc breve. Teste &c. Et sunt hujusmodi formæ infinitæ secundum diversitatem placitorum.

¹ "judicii," MS. Rowl. C. 160. | ² "et" omitted MS. id.

of terminating the plea, as if bastardy be objected, or such like, and in the same way on account of the difficulty of the judgment, and in many other ways. And in the same way arguments are transferred before the justiciaries itinerant, and indifferently, excepting that something is given for the "Pone." And in the same way from the courts of the barons. And finally it is to be noted, that in a plea by a petty writ concerning the domains of the lord the king no "Pone" may issue. The cause is also transferred from the county court to the (great) court on account of a false or fatuous judgment.

The king to the viscount greeting. Put before our justiciaries &c. a duel which has been waged in your county between A. complaining and certain hundreds concerning a certain judgment done to the said A. concerning beasts seized and detained against a surety and bail, as the said A. alleges. And whereof he complains that a duel has been waged unjustly and against the custom of our realm. And in the meantime cause to be made a record of the circumstances whereupon the aforesaid duel has been waged, and have that before our aforesaid justiciaries on the aforesaid day with four loyal knights of your county who took part in that record. And summon &c. four loyal knights of your county, who took part in that record, and besides four loyal knights from any of the aforesaid hundreds, who should be there in order to hear that record, and in order to make answer, and in order to receive judgment on behalf of the aforesaid hundreds. And have there the summoners, the names of the knights and this writ. Witness &c. And forms of this kind are infinite according to the diversity of pleas.

18.
Where
battle is to
be waged
against the
custom of
the realm.

f. 333.

CAP. VI.

1.
De diver-
sitate et
divisione
summoni-
tionum.

Translata ad magnā curiam ad petitionem petentis quæ incepta est p breve de recto p pone, oportet q suṃoneatur tenens, q sit ibi petenti inde responsurus. Et unde inprimis videndum est an sit suṃonitus, & ideo de suṃonitionibus aliquid dicatur. Et sciendum q est suṃonitio, & est post suṃonitiō aliquando captio in manum doñi regis p̄ defaultam, vel attachiamē, secundum quod actio fuerit realis vel psonalis, secundum quòd inferiùs dicitur. Item est mandatum dñi regis sive præceptum sine alia suṃonitione, q quis sit coram eo responsurus, vel aliquid factururus, vel q quis sit & habeat talem ad respondend', vel aliquid faciendum. Item est p̄ceptū vicecoṃ, quod faciat aliquē venire, vel attachiet, vel q habeat corpus alicuj⁹, vel ita attachiet q sit securus habendi corpus: secundum diversitatem suṃonitionum, & attachiamementorum, ut inferiùs dicitur de essoñ, & ubi aliquando sequitur essoñ, aliquando nō. Item suṃoñ alia fit in actione reali tā in causa possessionis, qm in causa pprietatis. Item alia in causa psonali, ubi s. aliqua psona obligatur in contractibus ad aliquid dandum vel faciendum, & in actionibus injuriarum.

2.
De sum-
monitione
generali.

Item suṃonitionum, alia generalis, alia specialis: generalis autem sive communis est, quæ tangit aliquam universitatem, sicut omnes de coṃ, vel omnes alicujus civitatis, burgi, vel villæ, pro aliquo q tangat

CHAPTER VI.

Upon an argument which has been begun by a writ of right having been transferred at the prayer of a claimant to the great court by a "Pone," it is incumbent that the tenant be summoned to be present in order to make answer thereon to the claimant. And hence it is first to be seen, whether he has been summoned, and therefore something should be said about summonses. And it is to be known that there is a summons, and there is after a summons sometimes a seizure into the hand of the lord the king on account of a default, or an attachment, according as the action has been real or personal, according to what will be explained below. Likewise there is a mandate or precept of the lord the king without any other summons, that a person should present himself before him in order to make answer or in order to do something, or that a person should be present and produce a certain person to make answer or to do something. Likewise there is a precept to the viscount, that he cause some one to come, or that he attach him, or that he produce the body of some one, or that he attach him so that he should be sure to produce the body: according to the diversity of summonses and attachments, as will be explained below concerning essoins, and where sometimes an essoin follows, and sometimes not: and a different summons is made in a real action as well in a cause of possession as in a cause of property. Likewise a different summons is made in a personal action, where, for instance, any person is obliged in contracts to give something or to do something, and in actions of tort.

Likewise of summonses some are general, others special, but a general or common summons is that which touches some corporate body, as all the inhabitants of a county, or all the inhabitants of a city, a borough, or a

1.
Of the diversity and division of summonses.

2.
Concerning a general summons.

universitatem, sicut generalis sūmonitio quæ fit ante iter justitiariorum & hujusmodi, quæ semper fieri debet in loco magis publico, & ideo dedici non poterit nec defendi, quia quod omnis de comitatu vel civitate sciverit vel cognoverit, unus vel plures hoc dedicere non possunt. Et talem generalem summonitionem sequuntur essonia, quæ quidem dicuntur essonia de communi summonitione, p quæ defenditur quis, & ejus absentia, si ad primum diem cōmunis summonitionis non venerit, dum tamen veniat ad diem sibi datum ad warrantizandum essonium, & ita q inde postmodum sine licentia non recedat.

3.
De sum-
monitione
speciali.

f. 333 b.

Britton, vi.
ch. v. § 3.

Est etiam specialis summonitio, quæ sub generali continetur, & si quis de aliquo placito speciali sūmonitus sit coram justitiariis, quo casu si primo die non venerit, nec se essoniaverit in placito speciali, erit in defalta, nec excusabitur, quàmvis de communi summonitione fuerit essoniatus, sed si in placito speciali, excusatur per essonium illud quantum ad cōmunem sūmonitionem, quamvis de ea causa specialiter essoniatus non fuerit. Item videndum ubi specialis sūmonitio fieri debeat, si ille qui summonitus est non inveniatur. Si autem inveniatur, fiat ei sūmonitio ubicunq̃ inventus fuerit in domicilio suo vel extra, sub testimonio duorum ad minus, qui hoc (si opus fuerit) possint certificare & testificare. Si autem non fuerit inventus, non tenentur sūmonitores eum ulterius quærere qu m ad domicilium suum, & in quo si fuerit inventus, fiat ei sūmonitio ut p̃dictum est, vel familiæ suæ, ei denuncianda cūm venerit. Item si in comitatu plura habeat domicilia, potiùs fiat ei sūmonitio ad domicilium ubi magis habitaverit, vel ubi majorem habuerit substantiā. Si autem domiciliū non habuerit,

vill, in respect of something which touches the whole body, as a general summons which is made before the circuit of the justiciaries, and such like, which ought always to be made in a very public place, and therefore cannot be gainsaid nor denied, because what every person of a county or of a city has known and had cognisance of, one or more cannot gainsay it. And the essoins, which are called essoins of a general summons, follow such a general summons, by which a person is defended and his absence, if he has not come on the first day of the common summons, provided he has come on the day given to him to warrant his essoin, and so that afterwards he may not withdraw without a licence.

There is also a special summons, which is contained under the general summons, and if any one is summoned concerning a special plea before the justiciaries, in which case if he has not come on the first day, nor has essoined himself in the special plea, he will be in default, nor will he be excused, although he has been essoined on the general summons, but if he has been essoined in the special plea, he is excused by that essoin, as far as regards the general summons, although he has not been specially essoined for that cause. Likewise it is to be seen, when a special summons ought to be made, if he who has been summoned is not found. But if he be found, let the summons be served upon him wherever he be found in his domicile or out of it, upon the testimony of two persons at least, who (if it be requisite) may certify and testify. But if he be not found, the summoners are not obliged to seek him further than at his own domicile, in which if he has been found, let the summons be served upon him as said above, or let it be served upon the household, to be announced to him, when he has come home. Likewise if he should have several domiciles in the county, let the summons rather be served upon him at the domicile where he most resides, or where he has his greater substance. But if he

3.
Concern-
ing a
special
summons.

f. 333 b.

nec dominicum in cōm, tunc si feodum habuerit, fiat summonitio ad feodum suum, & cū ita qualitercūq̃ prævntus fuerit sūmonitione, non poterit se extra regnum transferre, ut p hoc sibi acquirat dilationes de ultra mare, secundum quod inferiūs dicetur. Et quid si per sūmonitionem sic p̃ventus extra regnum se trans-tulerit, & ad diem suum essoniatus fuerit de ultra mare, quæro (cū non cōpetat tale essonium) an verti possit in essonium de malo veniendi, q bene compete-ret, si ab initio se taliter essoniasset? & videtur primā facie q sic, quia si quis primò se essoniaverit de malo lecti, ubi se essoniasse debuit de malo veniēdi, ordine nō observato, vertitur essoñ de malo lecti in essoñ de malo veniendi, & qui facit id q majus est, facit id quod minus est. Videtur igitur q eadem ratio est in casu p̃misso, quòd essoñ de ultra mare vertitur in essoñ de malo veniendi, cū sūmonitus sūmonitione sit p̃ventus sed non est idem in utroquē casu, quia in uno casu competit utrumq̃ essoñ, sed vertitur unum in aliud, propter ordinem non servatum. In alio verò casu non cōpetit nisi unicum tantum, s. essoñ de malo veniendi, i. de citra mare & non de ultra. Et unde cū se essoniaverit de essoñ de ultra mare, q non jacet, & non de essonio de citra, quod jacet, videtur (& verum est) quod carebit utroq̃, quia essonium q non est non potest cadere in essonium quod non est, quamvis esse deberet.

4.
Quis potest
summo-
nere.

Item vidend' quis summonere possit, & sciendum q omnis qui habet jurisdictionem & potestatē judicandi

should not have a domicile, nor a domain in the county, then if he should have a fee, let the summons be made at his fee, and when the summons has thus reached him in some way or other, he cannot transfer himself out of the realm, so as to be able for that reason to acquire delays as being beyond the sea, according to what will be explained below. And what if, after the summons has thus reached him, he has transferred himself out of the realm and on his day has been essoined as being beyond the sea, I ask, since he is not entitled to such an essoin, whether it can be turned into an essoin of illness in coming, to which he would be well entitled, if he had so essoined himself from the commencement? and it seems at first sight he may do so, because if a person has in the first place essoined himself on account of bed-sickness, when he ought to have essoined himself for illness in coming without any observation of order, the essoin of bed-sickness is turned into an essoin for illness in coming, and he who does that which is more, does that which is less. It seems therefore that the same reason holds in the case above mentioned, that an essoin of absence beyond the sea is turned into an essoin of illness in coming, when the party summoned has been seised with the summons, but it is not the same in both cases, because in one case both essoins are allowable, but one is turned into the other on account of due order not having been observed. But in the other case a single essoin alone is allowable, to wit, an essoin of sickness in coming, that is, within the sea and not beyond the sea. And hence, when he has essoined himself with an essoin of being beyond the sea, which does not lie, and with an essoin of being within the sea, which does lie, it seems (and it is true) that he shall be deprived of both, because an essoin, which is not, cannot fall into an essoin, which is not, although it ought to be.

Likewise it is to be seen who has the power to summon, and it is to be known that every person who has

4.
Who has
the power

ordinariam, sicut ipse dominus rex, vel delegatam, sicut justitiarius ab eo constitutus, & non alius à justitiario substituendus, quia justitiarius justitiariū substituere non potest, & ideo dico (ab eo qui habet jurisdictionem), quia alius coercionem non habet, & cū coercionem non habeat, punire non poterit contumacē, nec iudicium à non suo iudice factum ligat, nec tenet. Et in hoc casu aut constat ab initio justitiarium habere jurisdictionem, aut constat q non habeat, aut dubitatur an habeat. Si autem constiterit q habeat, venire teneatur summonitus vel se legitimè excusare, alioquin pœnam contumaciæ non evadet. Si autem constiterit quòd non, summonitus impunè se absentabit. Si autem dubitetur, venire debet summonitus, saltem privilegium fori allegaturus, ut infra plenius dicetur de prohibitionibus.

5. Item p quos & p quot facienda sit suṁmonitio, & videtur q per duos ad minus, qui si necesse fuerit, testificari possunt suṁmonitionem esse legitimè factā, & qui eam possint pbare si opus fuerit, & cū inde dubitetur, cū p justiciarios fuerint inde requisiti, de tempore, die & loco, & aliis circumstantiis, secundum q inferiùs dicetur. Item quando? & sciēdum q p quindecim dies ante diem quo comparere debeat fiat talis suṁmonitio omnibus, qui in regno sunt & extra comitatū & infra quatuor maria.

Per quos
et per quot
f. 334.
facienda
sit suṁmonitio, et
quando.

Quatuor
maria.

6. Et talis suṁmonitio dici debeat legitima. Si autem minus spacium cōtineat, possit illegitima iudicari nisi

Quæ suṁmonitio
sit legitima.

jurisdiction and an ordinary power of judging, as the lord the king himself, or a delegated power as a justiciary appointed by him, and not another person to be substituted by the justiciary, because a justiciary cannot substitute a justiciary, and therefore I say "by him who has jurisdiction," because another person has not coercion, and if he have not coercion he cannot punish a contumacious person, nor does a judgment, which is not made by his proper judge, bind any one, nor hold him. And in this case it is either certain from the beginning that the justiciary has jurisdiction, or it is certain that he has it not, or it is doubted whether he has it. But if it be certain that he has it, the person summoned is bound either to come or to excuse himself lawfully, otherwise he will not escape the punishment of contumacy. But if it be certain that he has it not, the person summoned will absent himself with impunity. But if it be doubted, the person summoned ought to come, in order to allege at least his privilege of a tribunal, as will be explained below more fully concerning prohibitions.

Likewise through whom and through how many persons the summons ought to be served, and it seems through two persons at least, who, if it be necessary, are able to testify that the summons has been lawfully made, and who can prove, if it be necessary, and when there are doubts thereon, if they should be required by the justiciaries, concerning the time, the day, and the place, and other circumstances according to what will be explained below. Likewise when? and it is to be known that for fifteen days before the day when an appearance should be made, such a summons ought to be served upon all, who are in the kingdom and beyond the county and within the four seas.

5. Through whom and through how many persons a summons ought to be served, and when.
f. 334.

And such a summons ought to be pronounced lawful. But if it comprise a less space, it may be adjudged

6. What summons is lawful.

Cf. ff. 241, ob causam legitimā minus tempus statuatur. Ut si
247.

ppter causam quæ instantiā desiderat, ppter rem fortè
quæ tempore pitura sit, vel ppter alias causas ubi in-
ducia arbitrariae sunt, ppter necessitatem, ut ppter
concilium Lateranense de ecclesiis vacantibus. Item
propter præsentiam partium in itinere justiciariorum
in eodem comitatu existentium, quod secùs est si ali-
qua manēs sit extra. Item propter personas qui cele-
rem habere debent justitiam, sicut sunt mercatores qui-
bus exhibetur¹ justitia pepoudrous,² & sic ex causa
moderatur tempus sūmonitiōis, & continet minus tem-
pus quandoq̃ quā spaciū xv. dierum. Et quandoq̃
tempus summonitionis ex causa continet tempus magis
diffusum, propter longam pegrinationem, secundum quod
quis fuerit in remota peregrinatione vel ppinqua, & in
hoc erit dilatio arbitrativa. Legitima igitur sūmoñ
erit quindecim dierū, modo quo pdictū est, & si minus
spaciū cōtineatur qm quindecim dierū sine causa
rationabili, tunc cū sūmonitus comparuerit, aut ca-
lumniata est summoñ sicut illegitima, aut non calum-
niata. Si autem non calumniata, tunc pcedat loquela
ac si sūmonitio esset legitima. Si autē calumniata fue-
rit & pbata illegitima, detur alius dies legitimus in
curia, quæ dedici non possit cōtra recordū justiciariorū.

Britton, vi. Si autem post minus legitimā sūmonitiōñ tenens se
ch. v. § 4. essoniaverit, vel defaltam fecerit, vel sine calūnia in
placito processerit, vel diem amoris ceperit, sūmonitiōñ
minus legitimè factam ulteriùs causari non poterit. Et
etiam bene poterit quis respondere sine sūmonitiōñ si
voluerit, nec ei injuriatur cū hoc velit. Sunt autē
quidam casus q tenens sūmonitiōñ dedicere non poterit,

¹ "exhibetur," MS. Rawl. C. 160. | ² "pepoudrus," MS. id.

unlawful, except upon a legitimate cause a less time be appointed. As of on account of a cause which demands instancy, on account of a thing by chance which is perishable, or according to other causes where a suspension of proceedings is arbitrary on account of necessity, as on account of the Council of Lateran concerning vacant churches. Likewise on account of the presence of the parties on the circuit of the justiciaries who are in the same county, which would be otherwise if any one of them was resident beyond the county. Likewise on account of persons who ought to have speedy justice, such as merchants, to whom justice is administered in courts of pepoudrous, and so for a certain cause the time of a summons is reduced, and it sometimes comprises a less time than a space of fifteen days. And sometimes the time of summons for a certain cause contains a longer period of time, on account of a long journey, according as a person is engaged on a distant or neighbouring journey, and in this matter the delay will be optional. A lawful summons, therefore, will be of fifteen days in the manner above said, and if it comprises a less space than fifteen days without reasonable cause, then when the person summoned has appeared, the summons is objected to as unlawful, or it is not objected to. But if it be not objected to, then let the argument proceed as if the summons were lawful. But if it be objected to and is proved to be unlawful, let another lawful day be assigned in court, which cannot be gainsayed against the record of the justiciaries. But if after an unlawful summons the tenant has essoined himself, or has made default, or without objection has proceeded with the plea, or has taken a day of love, he can no further allege as an excuse an unlawful summons. And a person may well answer without a summons if he will, nor is wrong done to him, when he is so willing. But there are certain cases where the tenant cannot deny the summons, as if before some one who has a record he

ut si coram aliquo, qui recordum habet, ubicunq̃ attornatum fecerit, ppter verba in attornato faciendo, ut cūm dixerit tenens, facio attornatum meum in loquela quæ est coram tali, vel coram te, p hoc concedit q̃ processit summoñ, quia non poterit esse coram aliquo nisi p̃cesserit suñonitio, quia si diceret in loquela quæ erit, sic nunquā admitteret ad attornū faciendum. Et si petens possit attornum facere statim post impetratioñ brevis, tenens hoc nunquā facere possit de jure antequā loquela sua fuerit coram suo iudice p suñonitioñ. Et unde si dicat feci attornatum meum, idem est q̃ confiteri suñonitionē, vel quasi, & si ante factus fuerit attornatus effectū non habebit ante suñonitionem, nec iusticiarius de aliquo potestatē habebit, antequam loquela fuerit coram eo p suñonitioñ. Nullus autem¹ dies dari debet extra coñ nisi p spacium xv. dierum, nec p tantum spacium sine essoñ, nisi hoc faciat consensus partium, quo casu fiat ut in fine dicetur de essonio.¹

¹ "Nullus autem" down to "de" | C. 160, but it occurs in MS. Rawl.
 "essonio" is omitted in MS. Rawl. | C. 159.

has anywhere constituted an attorney, on account of the words in the power of attorney, as when the tenant has said, I appoint my attorney in the argument which is before so-and-so, or before thee, by this he concedes that a summons has preceded, because he cannot be before any one unless a summons has preceded, because if he were to say, "in an argument which will be," he would never be admitted thus to appoint an attorney. And if the claimant can appoint an attorney immediately after suing out a writ, the tenant can never do this rightfully before his cause is before his judge by a summons. And hence if he says, I have appointed my attorney, it is the same as to confess the summons, or as it were so, and if the attorney were appointed beforehand it will not take effect before the summons, nor will the justiciary have any power over any person, before the cause is brought before him through a summons. But no day ought to be assigned beyond the county except for a space of fifteen days, nor for so long a space without essoins, unless the consent of the parties does this, in which case let it be done as will be explained in the end concerning an essoin.

TRACTATUS SECUNDUS
LIBRI QUINTI,
IN QUO TRACTATUR
DE ESSIONIIS.¹

f. 334 b.

CAP. I.

1.
De modo
procedendi
post sum-
monitio-
nem.

Glanville,
l. i. c. 30.
Britton, vi,
ch. v. § 6.

Ad diem verò sūmonitionis, sive legitima sit sūmo-
nitio sive non, aut cōparet summonitus, vel se essoniat,
vel defaltam facit. Si autem venerit, aut dedit sūmo-
nitio-
nem, aut concedit summonitionem legitimam, quo
casu, s. quando concedit sūmonitiōn legitimam, statim
respondeat si vicecōm miserit breve: si autem non,
recedet tenens quietus, & petens pquirat sibi p aliud
breve. Si autem breve venerit, tunc proposita inten-
tione petentis, respondeat tenēs intentioni, vel excipiat
cōtra breve, vel petat visum. Si autem causetur sum-
monitiō minùs rationabilem esse, detur ei dies ratio-
nabilis, ad quem veniat responsurus. Si autē illā om-
ninò dedixerit, sive sūmonitus fuerit sive non, tunc
querend' erit à petēte utrum se tenere voluerit ad
defaltā, vel ad placitū principale, si autem ad placitum
principale, tunc tenēs statim respōdeat. Si autem tenu-
erit se ad defaltā, & sūmonitus sūmonitiōn omninò de-
fendat, tunc sūmonitores vocandi sunt, q testentur sūmo-
nitiōn. Et cū diligenter examinati pbaverint sūmo-
nitiōn legitimè factam, tunc primò vadiat summonitus

¹ MS. Rawl. C. 160 has not any break in the Treatise here, but con-
tinues the context.

THE SECOND TREATISE
OF
THE FIFTH BOOK,
WHICH TREATS OF
ESSOINS.

CHAPTER I.

f. 334 b.

On the day of the summons, whether the summons be lawful or not, the person summoned either appears or essoins himself, or makes default. But if he has come, either he denies the summons or he allows it to be lawful, in which case, to wit, when he allows the summons to be lawful, he must forthwith answer, if the viscount has sent a writ; but if not, the tenant shall withdraw quit, and the claimant must provide for himself by another writ. But if a writ has come, then upon the declaration of the claimant having been propounded, let the tenant reply to the declaration, or let him except against the writ, or let him claim a view. But if he shall allege the summons to be unreasonable, let him have a reasonable day assigned to him, at which he shall appear in order to make answer. But if he shall have altogether denied it, whether he has been summoned or not, then the claimant must be questioned whether he wishes to hold himself to the default, or to the principal plea, but if to the principal plea, then let the tenant forthwith make answer. But if he has kept himself to the default, and the person summoned denies altogether the summons, then the summoners are to be called in order to testify to the summons. And when, having been diligently examined, they have proved the summons to have been lawfully made, then let the per-

1.
Of the
mode of
proceeding
after a
summons.

legem, & defendat summonitiōn p legem cōtra testifica-
tionem sūmōnitorum, s. q summonitio non pvenit ad
ipsum, sed q nec ad ipsum, nec ad domicilium suum. Si
autem sūmōnitores in pbatōne sūmōnitionis diligenter
examinati concordēs non extiterint, tunc (quasi sūmōni-
tione nullā) non habebit summonitus necesse sūmōni-
tione defendere p legem, sed detur ei alius dies legiti-
mus, nisi gratis incontinenti velit respondere. Cūm au-
tem post legem vadiatam diem habuerit tenens de lege
facienda, ad diem illum se poterit essoniare de placito
legis vadiatæ, & tunc in fine veniat cum lege, & eam
faciat, si possit, & si in lege faciendā defecerit tenens,¹
petens seysinam suam recuperabit statim,² vel si defal-
tam fecerit, petens statim² seysinā suam recuperabit
per defaultam, si tenens p̄sens fuerit: si autem absens,
capiatur terra in manum domini regis per parvum
cape, & ipse summoneatur quōd sit ad aliam diem au-
diturus iudicium suum, per breve inferiūs notandum.
Si autē ad primum diem non cōparuerit tenens, sed
antequam comparuerit in curia defaultā fecerit, tunc aut
vicecomes misit breve aut non misit: si vicecom̄³ non
misit breve, tunc cūm petens offerat se liti, iudiciarii
pcedere non poterint secundū defaultā sine warrāto,
vel sine brevi, nec poterit⁴ alium diem dare, infra
quem mandare possint vicecomiti q faciat venire breve,
quia tali modo sine brevi et warranto dando diem, sibi
usurparet⁵ jurisdictionem, nec etiam si breve veniret
ad alium diem non valeret, quia dies sūmōnitionis
p̄terit, erit igitur opus alio brevi. Si autem miserit
breve, offerente se liti petente, propter defaultam tenen-

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¹ "tenens" omitted MS. Rawl. C. 160.

² "statim" omitted, id.

³ "vicecomes" omitted, id.

⁴ "poterint," MS. Rawl. C. 160.

⁵ "usurparent," id.

son summoned wage his law and deny the summons by his law against the testimony of the summoners, to wit, that the summons did not reach him, and that it neither reached him nor his domicile. But if the summoners having been carefully examined on the proof of the summons have not been found to agree with one another, then (as if there had been no summons) the person summoned shall not be under the necessity to deny the summons by his law, but another lawful day should be assigned to him, unless gratuitously he should be willing forthwith to make answer. But when after waging his law the tenant shall have a day to make his law, on that day he may essoin himself upon the plea of a wager of law, and then in the end let him come with his law, and let him make it, if he can, and if the tenant has failed in making his law, the claimant shall recover his seysine forthwith, or if he has made default, the claimant shall forthwith recover his seysine by default, if the tenant be present, but if he be absent, let the land be seised into the hand of the lord the king by a little *cape*, and let him be summoned himself, that he be present on another day in order to hear his judgment, by a writ to be noted below. But if the tenant has not appeared on the first day, but has made default before he has appeared in court, then either the viscount has sent a writ or he has not sent it: if the viscount has not sent a writ, then when the claimant presents himself to contest the suit, the justiciaries may not proceed according to the default without a warrantor, or without a writ, nor can they give another day, within which they can send a mandate to the viscount to cause a writ to come, for by giving a day in such a manner without a writ or a warrantor they would usurp jurisdiction to themselves, and even if a writ were to come for another day, it would not avail, because the day of the summons has passed, there will therefore be need of another writ. But if he has sent a writ, upon the claimant presenting himself to contest the suit, on

f. 335.

tis capietur terra in manum domini regis per magnum cape, cujus forma inferius notatur, et tenens summonetur quòd sit ad alium diem responsurus de capitali placito & de defalta, scilicet quare non fuit ad primum diem sicut summonitus fuit, ad quem diē si venerit statim respondeat ad capitale placitum, nisi petens se tenere voluerit ad defaltam, si autem se tenuerit ad defaltam, tunc oportet tenentem docere causam sufficientem, et rationem quare non fuit ad alium diem sicut summonitus fuit. Causæ quidem possunt esse plures, de quibus inferius dicetur. Et quarum una poterit esse talis inter alias, quòd nullam habuit summonitionem, quo casu oportebit petentem docere contrarium per summonitores qui fecerunt summonitionem, alioquin nulla erit summonitio, nec aliqua defalta. Et ideo statim respondeat tenens ad placitum capitale. Si autem testata fuerit summonitio & probata, tunc erit locus defensionis per legem, secundum quod superius dictum est. Si autem post primam captionem ad alium diem non venerit, amittet seysinam suam per secundam captionem per parvum cape, nisi tunc veniat et defendat per legem, ut supra de summonitionibus et supersisis.¹ Si autem ad primum diem non venerit sed se essoniaverit, tunc videtur quodāmodo concessisse summonitionem, donec præsens illam defenderit, & dedixerit. Quo casu, dabitur ei alius dies per essoniatorē suum, sive breve venerit sive non. Ad quem diem si tenens venerit, statim respondeat vel excipiat. Si autem non venerit, capiatur terra in manum dñi regis per defaltam, et ipse sumoneatur quòd sit ad alium diem per magnum cape, inde responsurus et ostensu-

¹ "ut supra summonitiones et sursisas," MS. Rawl. C. 160.

account of the default of the tenant the land shall be seized into the hand of the lord the king by a great *cape*, the form of which is noted below, and let the tenant be summoned that he be present on another day in order to answer concerning the capital plea and concerning the default, to wit, wherefore he was not present on the first day as he was summoned, upon which day if he has come, let him forthwith answer to the capital plea, unless the claimant has wished to keep himself to the default, but if he has kept himself to the default, then it is necessary that the tenant show sufficient cause and reason wherefore he has not been present on another day, as he has been summoned. The causes may be several, concerning which it will be explained below, and whereof one may be of this kind amongst others, that he has had no summons, in which case it will be incumbent upon the claimant to show the contrary by the summoners who have served the summons, otherwise there will be no summons, nor any default. And accordingly let the tenant answer forthwith to the capital plea. But if the summons has been attested and proved, then there will be place for a defence by his law, according to what has been said above. But if after the first seizure he has not come upon another day, he shall lose his seysine by a second seizure through a little *cape*, unless he shall then come and defend by his law as above concerning summonses and demurrers. But if he has not come on the first day, but has essoined himself, then he seems in some manner to have admitted the summons, until he should be present to contest it and has denied it. In which case, another day will be allowed to him through his essoiner, whether the writ has come or not. At which day if the tenant has come, let him forthwith answer or object. But if he has not come, let his land be seized into the hand of the lord the king by default, and let himself be summoned by a great *cape*, that he be present on another day in order to answer and to show where-

Glanville,
l. i. c. 19.

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rus, quare non servavit diem sibi datum per essoniatorem suum. Ad quem diem si non venerit, fiat ut supra ex secunda defalta. Et si venerit, eodem modo ut supra. Si autem ad diem sibi datum per essoniatorem suum de malo veniendi faciat se essoniari tenens de malo lecti, tunc dabitur alius dies petenti, licet non tenenti: infra quam, & statim post essonium mittantur ad eum quatuor milites de comitatu, ad videndum utrū infirmitas, qua se tenens essoniaverit, sit languor vel non. Et tunc cū venerint ad locū ubi jacuerit vel jacere debuit, invenerit¹ eū in lecto sicut essoniatus fuit et confitentem essoniū, sive revera se ipsum essoniaverit, seu falsō essoniatus fuerit p alium. Quo casu procedent milites in visu faciendo modo debito, secundum q inferiūs dicetur (ac si omnia ritè acta essent) et dabunt ei malum transiens, vel languorem, secundū q judicaverint de statu suo, nec ad diem sibi datū poterit tenens ulteriūs defendere summonitiones, nec dedicere, et sursisas contra attestationem quatuor militum, nec contra propriam recognitionem essonii, cum prædicti quatuor milites in hoc habeant recordum, nec etiam si dicat quòd petens ipsum falsō essoniari fecerit, etiā sine summonitione: utroquē essonio audiri non debeat, quasi propriam allegans falsitatem. Si autē quatuor milites invenerint eum extra lectum in curia, vel vagantem p rura, & diffitentem² essoniato-rem, tunc non possunt ei diē dare, vel si dederint, forte non vult aliquē recolligere, vel forte non est inventus in loco ubi jacere debuit, q possint ei diem dare. Et unde cū ad diem eis præfixum in curia, sive petens plures dies secutus fuerit versus eos, sive

¹ "invenerint," MS. Rawl. C. 160.

² "deficientem," MSS. Rawl. C. 160 and C. 159.

fore he has not kept the day given to him through his essoiner. At which day if he has not come, let it be done as above on a second default. And if he has come, let it be done in the same way as above. But if upon the day given to him through his essoiner for sickness in coming the tenant cause himself to be essoined for bed-sickness, then let another day be given to the claimant, although not to the tenant, within which and forthwith after the essoin let four knights of the county be sent to him, to see whether the infirmity for which the tenant has essoined himself be languor or not. And then when they have come to the place where he lies ill or is said to lie ill, they will have found him in bed as he was essoined and confessing the essoin, whether he has truly essoined himself or has been falsely essoined by another. In which case the knights shall proceed to make a view in due manner, according to what will be said below, as if all things had been duly done, and they shall assign to him a passing sickness, or languor, according to what they have judged concerning his state, nor upon the day assigned to him will the tenant be able to contest the summonses nor to deny them, nor the adjournments, against the attestation of the four knights, nor against his own recognition of the essoin, since the aforesaid four knights have in this matter a record, nor even if he should say that the claimant has caused himself to be falsely essoined, even without a summons; upon either essoin he ought not to be heard, alleging as it were his own falseness. But if the four knights have found him out of bed in the court, or walking about the country, and discrediting his essoiner, then they cannot assign to him a day, or if they shall assign one, perchance he is not willing to recollect it, or by chance he is not found in the place where he ought to be lying, so that they may be able to assign to him a day. And hence when on the day prefixed for them in the court, whether the claimant has obtained several days against

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unum, & testati fuerint visum suum secundum q ipsum invenerunt vel non, tunc si tenens non venerit, capia-
tur terra in manum domini regis, & pcedatur per om-
nia sicut superius dictum est. Si autē venerit, defend-
ere poterit suṃonitionem & essonium, tam de malo
veniendi quàm de malo lecti, & etiam sursisas tam
primæ defaltæ, ad primam captionem, quàm secundæ
ad secundam, usquē ad iudicium. Post iudiciū vero
non erit locus defensionī per legem contra probationem
summonitionis, cū iudicia rata esse debeant, si pe-
tens¹ se tenuerit ad defaltam, & quo casu facta exa-
minatione de suṃonitione, si suṃonitio testata fuerit,
statim vadiat legem, & habeat diem ad legem facien-
dam, & cū legem fecerit post essonia sua, statim &
eodem die respondebit sine alia summonitione, sicut
inveniri poterit in rotulo de termino ut supra.² Si
autē omninō nulla præcessit summonitio, & petens
falsō essoniare fecerit tenentem aliquo essonio uno vel
pluribus, cū tenens nihil inde sciverit, & post sum-
monitionem quæ fieri debuit & essonia, capta sit terra
in manum domini regis, & post primam defaltam &
secundam adjudicata sit seysina petenti, cū nulla de-
falta ibidem esse debeat: ad querelam tenentis subve-
niendum est ei hoc modo, scilicet quōd suṃoneantur
suṃonitores, & illi per quorum visum terra capta fuit
in manum domini regis, ut inde diligens fiat exami-
natio, & si pbata non fuerit summonitio, nec testata,
nulla erit defalta, nec necesse esset defendere summo-
nitionem, quæ nulla est propter defectum probationis.
Item cū nulla sit summonitio nec defalta, nulla sequi
deberet captio, & cū captio nulla, nulla sequi deberet

¹ "si petens" down to ut "supra"
omitted in MS. Rawl. C. 159.

² "ut supra" omitted MS. Rawl.
C. 160.

them or only one, and they have testified their view according as they have found him or not, then if the tenant has not come, let the land be seized into the hand of the lord the king, and let the proceedings in all things be conducted as above said. But if he has come, he may contest the summons and the essoin, as well for sickness in coming as for bed-sickness, and likewise demurrers as well of the first default at the first caption, as of the second default at the second caption up to the judgment. But after the judgment there will be no place for a defence by his law against the proof of a summons, since judgments ought to be ratified, if the claimant has held himself to the default, and in which case upon an examination having been made concerning the summons, if the summons has been attested, let him forthwith wage his law, and let him have a day to make his law, and when he has made his law after his essoins, forthwith and upon the same day he shall answer without another summons, as may be found in the roll of the term as above. But if no summons at all has preceded, and the claimant has falsely caused the tenant to essoin himself by some one or more essoins, when the tenant has known nothing thereof, and after the summons, which ought to have been made, and the essoins, the land has been seized into the hand of the lord the king, and after the first and second default seysine has been adjudged to the claimant, when there ought to have been no default at all, at the complaint of the tenant he is to be aided in this manner, to wit, that the summoners are to be summoned, and those persons by whose view the land has been seized into the hand of the lord the king, that a diligent examination be thereon made, and if the summons has not been proved, nor attested, the default shall be null, nor shall it be necessary to contest the summons, which is null on account of the failure of proof. Likewise when the summons and the default are null, no seizure ought to follow, and when the seizure is

possessionis amissio, ergo à primo, ubi nulla summonitio, nulla sequitur possessionis amissio, quia ubi primum & principale (quod est summonitio) non subsistit, nec ea quæ sequuntur locum habere debent, & ad querelā talis fiat vicecōm breve in hac forma.

2.
Breve de
habendo
eum coram
justitiariis,
qui per
fraudem,
malitiam
et falsita-
tem essoni-
avit adver-
sarium
suum.

f. 336.

Rex vic. salutē. Præcipimus tibi, quòd habeas coram justitiariis nostris &c. talem petentem, scilicet, ad audiendum judicium suum et considerationem curiæ nostræ de hoc, quod ipse per malitiam & manifestā falsitatem fecit disseysiri talem de tanta terra cum pertinentiis &c. Et unde, cū idem B. nullam haberet sūmonitionē, optulit se idem A. versus eum, ita quod terra capta fuit in manū nostram semel & secundò, & per quam defaultam idem A. terram illam recuperavit, desicut illa defaulta nulla fuit, ut dicit : & catalla ipsius B. in eadem terra tunc inventa & ei occasione prædicta oblata, eidem sine dilatione reddi facias & restitui. Præcipimus etiam tibi quod habeas coram &c. ad eundem terminum A. et B. per quos summonitio prima facta fuit, & in curia nostra testata, & præterea quatuor illos per quorum visum terra illa capta fuit in manum nostram, & per quos captio illa testificata fuit in curia nostra &c., & etiam illos per quos secunda sūmonitio facta fuit & testata, ad certificandum justiciarios n̄rs de p̄dictis sūmonitionibus & captionibus. Et habeas ibi hoc breve. Teste &c. Ad quem diem cū venerint, diligenter examinentur. Inprimis sūmonitores primi de prima sūmonitione, & postea illi quatuor per quorū visum terra illa capta fuit in manum domini regis, et ultimò duo ultimi sūmonitores. Et in quo casu, si primi summonitores in omnibus convenerint & concordent, & summonitionem primam ritè factam esse pbaverint, & prædicti quatuor, per quorum visum terra capta fuit,

null, no loss of possession ought to follow, therefore from the first, where there is no summons, no loss of possession follows, because where the first and principal (which is the summons) does not exist, those things which follow ought not to take place, and at the complaint of such an one let a writ in this form issue to the viscount.

The king to the viscount greeting. We enjoin you that you produce before our justiciaries, &c. so-and-so the claimant, to wit, to hear his judgment and the resolution of our court on this matter, that he through malice and manifest falsehood has caused so-and-so to be disseysed of so much land with the appurtenances &c. And hence when the said B. had no summons, the said A. presented himself against him, so that his land was seized into our hand once and a second time, and through which default the said A. recovered that land, since that default has been null, as he says; and that you cause the chattels of the said B. found at that time on the said land and presented to him on the aforesaid occasion, to be rendered and restored to him without delay. We also enjoin you that you should produce &c. at the same time A. and B., through whom the first summons was made, and was attested in our court, and besides those four persons by whose view that land was seized into our hand, and through whom that seizure was testified in our court, &c., and likewise those, through whom the second summons was made and attested, to certify our justiciaries concerning the aforesaid summonses and seizures. And produce there this writ. Witness, &c. At which day when they have come, let them be diligently examined: in the first place the first summoners concerning the first summons, and afterwards those four, through whose view that land has been seized into the hand of the lord the king, and in the last place the two last summoners. And in which case if the first summoners have agreed and are of accord in all things, and have proved that the first summons has been duly made, and the aforesaid four persons, by whose view the land has been

2.
A writ to produce before the justiciaries the person, who through fraud, malice and falsehood has essoined his adversary.

f. 336.

captionem ritè factam pbaverint, & ultimi suṃmonitores suṃmonitionem ultimam, & sic per omnia convenient & concordent, adhuc locum habebit defensio per legem contra utrasquè summonitiones in forma prædicta. De hac materia inveniri poterit de termino S. Michaelis anno regis Henrici tertio incipiente quarto in comitatu Sur̃ de Roberto de Basings querēte. Si autē primi duo suṃmonitores non convenerint nec concordent, licet omnes alii convenient in captione, & in secunda summonitione, non valebit: cū prima suṃmonitio deficiet quasi nulla, & si omnes discordes sint ubique & in nihilo concordēs, multo minus, & quo casu retractabitur iudicium, & reformabitur possessio primo possessori. Item non in omni casu imputari possit suṃmonitoribus, sed negligentiae vicecomitis, & unde inquirendum erit quis in culpa fuit, utrum vicecomes vel suṃmonitores, & si summonitio remanserit faciēda pro defectu vicecomitis, quia illam alicui nunquam injunxit faciendam, in misericordia domini regis remanebit, nisi excusationes habeat per quas se defendere possit: quæ tales esse possunt, scilicet breve tam tardè recepit & extra comitatum, q nulli potuit injungere suṃmonitionem faciendam, vel quòd aliud præceptum majus supervenit de negotio ipsius domini regis, ubi oportuerit eum psonaliter interesse, et quo casu amittit petens breve suum, & alio brevi opus erit, quia dies suṃmonitionis in primo brevi præteriit. Si vero dicat vicecomes q summonitionem faciendam injunxit legitimis summonitoribus, sive extra comitatum sive in comitatu, & illi hoc confiteantur, sed suṃmonitionem non fecerint, suṃmonitores

Glanville, l.
1. i. 30. §
5.
Britton, vi.
ch. v. § 6.

seized, have proved that the seizure was duly made, and the last summoners have proved the last summons to have been duly made, and so in all matters they agree and are of accord, a defence on the law against both summonses shall still have place in the form abovesaid. On this subject a case will be found in St. Michael's term in the third and fourth years of king Henry in the county of Surrey, concerning Robert de Basings the complainant. But if the two first summoners do not agree nor are of accord, although all the others agree in the seizure and in the second summons, it will not avail, since the first summons will fail as being as it were null; and if all should be discordant everywhere and in nothing of accord, much less will it avail, and in which case the judgment will be retracted, and the possession will be re-established for the first possessor. Likewise it cannot in all cases be imputed to the summoners, but to the negligence of the viscount, and hence inquiry will have to be made, who has been in fault, whether the viscount or the summoners; and if the summons has remained to be made from the default of the viscount, because he has never enjoined any one to make it, he will remain at the mercy of the lord the king, unless he has certain excuses, through which he can defend himself: which may be of this character, to wit, that he received the writ so late and outside the county, so that he could not enjoin any one to make the summons, or because some other more important precept supervened concerning the business of the lord the king himself, where it was incumbent upon him to be present in person, and in which case the claimant loses his writ, and he will have need of another writ, because the day of summons in the first writ has passed. But if the viscount should say that he has enjoined the lawful summoners to make that summons, whether outside the county or within it, and they confess it, but the summoners have not made the summons, the summoners

in misericordia remanebunt, & illud breve inutile erit petenti, quia dies summonitionis p̄terit. Si autem negaverint hoc sibi fuisse injunctū, tunc aut fuit hoc eis publicè injunctum in comitatu, vel extra comitatum sine solennitate aliqua, quo casu hoc dedicere possunt contra vicecomitē, & vicecomes in misericordia. Si autem in comitatu hoc fuerit eis injunctū, non poterunt hoc dedicere contra recordū comitatus, quia comitatus in hoc habet recordum, sicut in aliis publicis actibus, qui fieri debent cū solēnitate. Publici verò actus sunt, injungere sūmonitiones, plegios capere de psequendo, & de stando ad rectū, tam in civili negotio, quā criminali. Si autē sūmonitores non venerint ad primum diem ad testificādam sūmonitionem, ubi dedicere non possunt quin hoc eis esset injunctū, in misericordia remanebunt. Item quis sūmoneri debet videndum, & sciendum q̄ tam minor quā major, tam masculus quā fœmina, dum tamen minor non sūmonetur per se, si cōstiterit ipsum esse minorem, sed p̄

f. 336 b. Britton, vi. ch. v. § 2. tutores, custodes sive procuratores in loquelis, nisi minores infra ætatem respondere tenentur, non obstante minore ætate. Item viri religiosi per procuratores, syndicos & actores ppetuos & non amotibiles, et qui tales sint quòd possint lucrari & perdere, & rem in judicium deducere. Et notandum in fine quòd si quis summonitionē cognoverit, causetur tamē illā esse minus legitimam, hoc faciat primo die sūmonitionis. Si autē primo die se essoniaverit vel defaltam fecerit, ulterius brevem sūmonitionem causari non poterit. Et ad hoc notandum, q̄ summonitionum, alia poterit esse legitima & sufficiens ab initio, & cū testata fuerit & pbata,

will remain at the mercy of the lord the king, and that writ will be useless to the claimant, because the day of summons has passed. But if they have denied that this has been enjoined to them, then this has either been publicly enjoined to them within the county or outside of it without any solemnity, in which case they may deny this against the viscount, and the viscount will be at the mercy of the lord the king. But if this has been enjoined to them within the county, they cannot deny this against the record of the county court, because the county court has in this matter a record, as in other public acts, which ought to be performed with solemnity. But the public acts are to enjoin summonses, to take security for prosecutions and for standing a trial, as well in a civil as in a criminal business. But if the summoners have not come on the first day to testify to the summons, where they cannot deny that this has been enjoined to them, they will remain at the mercy of the lord the king. Likewise we must see who ought to be summoned, and it is to be known that a minor as well as a person of full age, a male as well as a female, provided however that a minor be not summoned by himself, if it is ascertained that he is a minor, but through his tutors, his guardians, or his proctors to conduct causes, unless minors under age are bound to answer, notwithstanding their minority. Likewise men of a religious order through their proctors, syndics and perpetual agents not removable, and who are such as may lose or gain, and carry a suit to judgment. And it is to be noted finally that if any one has admitted a summons, but he alleges that it is not legitimate, let him do this on the first day of the summons. But if on the first day he has essoined himself or has made default, he cannot any further allege a short summons. And in addition to this it is to be noted, that of summonses one may be legitimate and sufficient from the beginning, and when it has been testified and proved,

f. 336 b.

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defendi poterit per legem, sed hoc antequam quis in iudicio comparuerit. Est etiam alia legitima cum quis in iudicio comparuerit, quæ deduci non poterit, nec defendi per legem, scilicet postquam quis in iudicio comparuerit. Item est & alia viciosa & non sufficiens, ubi fit tantum per unum, qui recordum habere non potest, nec per se inducere præsumptionem. Item poterit esse legitima ab initio sed inefficax ex post facto, deficiente probatione cùm sūmonitores examinati in probatione non concordent, nec erit necesse talem summonitionem defendere per legem, cùm sit quasi nulla. Item est omninò vitiosa summonitio, quæ fit fraudulenter per deceptionem petentis per falsos sūmonitores & non per vicecomitem & ballivos suos. Est etiam vitiosa, ubi fit in absentia tenentis cùm peregrè profectus fuerit ad partes transmarinas vel alias remotas, vel cùm fuerit in itinere cōstitutus & iter arripuerit eundi, ita quòd citatio vel summonitio eum non comprehendit in domicilio, nec inventus fuerit a sūmonitoribus infra comitatum, ubi sūmonitio facienda demandatur, quia si extra comitatū inveniatur, non ligat eum sūmonitio, quia non tenetur ubiquè recipere sūmonitionem, nec à quocunquè, & non nisi à ballivis cùm warrantum habuerint sūmonendi. Item poterit esse sūmonitio legitima, & dies & dilatio illegitima, si tempus illegitimum non continuerit, si hoc causetur, aliter autem non, ut infra.

CAP. II.

1. Legitimè summonitus si non venerit puniendus erit, nisi causas excusationis habeat legitimas, per quas suam excusare posset absentiam, quæ quidem plures esse possunt, et tunc videndum erit utrum absens sit quis ex causa necessaria & utili vel ex causa volun-

De exceptionibus qui non venerit ad summonitionem.

it may be contested at law, but this before any one has appeared in judgment. There is another which is legitimate when a person has appeared in judgment, which cannot be denied nor contested at law, to wit, after a person has appeared in judgment. Likewise there is another which is defective and not sufficient, when it is made only by one person, who cannot have a record nor by himself induce a presumption. Likewise it may be legitimate from the beginning, but ineffective *ex post facto*, the proof failing when the summoners having been examined are not of accord in the proof, nor will it be necessary to contest such a summons at law, since it is as it were null. Likewise there is a summons that is altogether defective, which is made fraudulently through the deceit of the claimant by false summoners and not by the viscount and his bailiffs. There is likewise a defective summons, where it is made in the absence of the tenant, when he has set forth on a journey abroad to parts beyond the seas or other remote parts, or when he is embarked on a journey and has set out on his road, so that the citation or summons does not find him in his domicile, nor has he been found by the summoners within the county, where the summons is ordered to be made, because if he be found beyond the county, the summons does not bind him, because he is not obliged to accept everywhere the summons, nor from any one except from the bailiffs, when they have a warrant to summon him. Again the summons may be legitimate, and the day and the delay illegitimate, if it has not contained an illegitimate time, if this be alleged, but otherwise not, as below.

CHAPTER II.

A person having been lawfully summoned, if he has not appeared, will have to be punished, unless he have legitimate causes of absence, through which he may excuse his absence, which may be of several kinds, and then it is to be seen whether a person has been absent

1.
Of the exceptions of him who has not appeared to the summons.

taria, si autem ex causa necessaria & utili, ut rei publicæ causa, ita quòd profectus sit in exercitum cum domino rege ad defensionem patriæ per præceptum domini regis, cùm ad hoc obligatus sit, excusatur: dum tamen hoc non affectaverit, nec in servitio alterius quàm domini regis, cùm ad hoc non teneatur nisi velit. Talibus enim non subvenit dominus rex nisi de gratia. Cùm autem quis ita se excusaverit de servitio domini regis, videndum erit utrum summonitione præventus sit vel non. Si autem summonitione præventus sit ita quòd attornatum facere possit, & copiam habuerit, & non fecerit, non erit ei subveniendum ex tali causa excusationis, quia mittere poterit attornatum. Sed ita esset, si quis posset factum domini regis judicare. Si autem summonitione non sit præventus, tunc videndum utrum commodè & sine periculo venire possit, sive in servitio fuerit sive in officio, vel non. Si autem commodè venire possit, non excusatur, si autem commodè venire non possit, tunc videndum erit si mittere possit vel non propter vim majorem. Si nec venire, nec mittere possit, nec attornatum facere, quia dominus rex præsens non est, forte excusatur per servitium. Sed in omnibus istis casibus magis erit spectanda voluntas domini regis quàm jus strictum, cùm servitium domini regis nulli debeat esse damnosum; & sicut non debet esse tenenti damnosum, ita non debet esse tenenti injuriosum. Officium vero alicujus sicut vicecomitis & constabularii neminem excusat, nisi in officio illo aliqua causa emergat necessaria ex inopinato, ubi præsentia talis debet esse necessaria, sicut iter justitiariorum vel incursus hostium, vel hujusmodi, quæ quidem causæ sufficientes sunt ad

from a necessary and useful cause, or from a voluntary cause, and if from a necessary and useful cause, as upon business of the State, for instance, that he has gone to the army with the lord the king for the defence of the country in obedience to the precept of the lord the king, since he is under obligation to such service, he is excused, provided however he has not affected this, nor has been in the service of any other than the lord the king, since he is not obliged to this, if he does not wish. For such persons the king does not assist except of grace. But when a person has so excused himself on account of the service of the lord the king, it will have to be seen whether he has been anticipated by the summons or not. But if he has been anticipated by the summons in such a way that he could constitute an attorney, and has had plenty of time, and has not done it, he is not to be aided upon such a cause of excuse, because he can send an attorney. But it would be so, if any one could judge the act of the lord the king. But if he has not been anticipated by the summons, then it is to be seen whether he can come conveniently and without danger, whether he be in service or in office or not. But if he can come conveniently, he is not excused, but if he cannot come conveniently, then it is to be seen if he can send or not on account of *vis major*. If he can neither come, nor send, nor constitute an attorney because the king himself is not present, he is perchance excused through his service. But in all these cases the will of the lord the king is rather to be regarded than strict right, since the service of the lord the king ought not to be damaging to any one, and as it ought not to be damaging to the tenant, so it ought not to be wrongful to the claimant. But the office of any one, as for instance of the viscount and of the constable, excuses nobody, unless in that office some necessary cause arises unexpectedly, where the presence of such person ought to be necessary, as the circuit of the justiciaries, or an incursion of enemies, or such like, which causes

f. 337.

Glanville, l.
c. ii.
Britton, vi.
ch. vii. § 2.

excusationem de servitio domini regis, dum tamen ad quemlibet diem datum per essoniatores de servitio dñi regis habeat essoniatus warrantum suum per breve dñi regis, quod si hoc non habuerit, procedatur ad defaultam contra absentem, sicut contra eum qui non est excusatus. Item eodem modo excusat causa peregrinationis, sive brevis sit sive longa. Eodem modo videndum, utrum quis prævenerit sit summonitione vel non. Item excusat summonitum adversa validatio nimia, quia poenam contumaciæ non patitur, quem adversa validatio defendit. Et provenit quandoquæ talis adversa validatio ex infirmitate veniendi, quæ infirmitas dicitur de malo veniendi: sive de infirmitate de reseantisa quæ dicitur infirmitas de malo lecti. Item excusatur quis propter majoris causæ occupationem, ut si quis implacitatus fuerit in curia domini regis, vel vocatus ad curiam regis ob aliquam causam, in omnibus curiis inferioribus excusatur. Sed quid dicendum erit de curia Christianitatis, cum magis obediendum sit Deo quam hominibus? hoc dico, quod ad hunc differendum erit, & quod dominus rex warrantizare poterit, ob reverentiam quæ principi debetur. Item excusat absentia¹ non venientis usque ad quartum diem majoris rei impetus, cui resisti non poterit, per casum fortuitum, ut si quis in veniendo versus curiam, cum nullam aliam habeat excusationem, captus fuit ab hostibus, & per vim detentus, quod venire non possit. Item si incidat in latrones. Item propter vim fluminum, vel quia pons solutus est, vel per tempestatem nimiam ad impedimentum navium, & ita quod summonitus venire non possit tempestive per circuitum,

¹ "absentiam," MS. Rawl. C. 160.

are sufficient for an excuse on the service of the lord the king, provided that upon a certain day appointed through the essoiner on the king's service the person essoined has his warrantor through a writ of the lord the king, but if he has not this, let proceedings be had for default against the absent person, as against him who has not been excused. Likewise in the same manner the reason of a journey, whether it be short or long, is an excuse. In the same way it is to be seen whether a person has been anticipated by a summons or not. Likewise excessive infirmity of health excuses a person summoned, because he does not suffer the penalty for contumacy, whom adverse health prevents. And sometimes such adverse health arises from an infirmity in coming, which infirmity is called sickness on the way, or from an infirmity in staying at home, which is called infirmity from bed-sickness. Likewise a person is excused on account of occupation by a more important cause, as if he has been impleaded in the court of the lord the king, or has been called to the court on account of some cause, he is excused in all inferior courts. But what shall we say concerning the court of Christianity, since obedience is rather to be given to God than to man? I say this, that a difference is to be made here, and that the lord the king may warrant, on account of the reverence which is due to the Prince. Likewise the pressure of a more important business, by an accident which could not be resisted, excuses the absence of a person, who does not come until the fourth day, as if a person in coming towards the court, when he has no other excuse, has been taken captive by enemies and detained by violence, so that he cannot come. Likewise if he falls amongst robbers. Likewise on account of the violence of the rivers, or because a bridge has broken down, or through excessive bad weather, which has impeded navigation, and so that the person summoned could not come in time by a circuitous road; because if

quia si venire possit summonitus tempestivè p circum-
itū, non excusatur p talē fortuitum eventum.

2.
De excep-
tionibus¹
f. 337 b.
non veni-
entis ad
judicium
post sum-
monitio-
nem.

Item non excusatur, si tardiùs à domicilio recederet
quàm expediret, quia si citiùs, cōmode venire potuis-
set, nec impediret eum casus fortuitus. Eodem modo
si priùs à domicilio recesserit quàm deberet, & in casum
fortuitum ceciderit, hoc erit ei imputandum, quia si
tempore congruo, in casus fortuitos non incideret.
Item poterit summonitus assignare causam suam²
quare fuit impeditus & qualiter, ut si contentiones
quæ sunt, & occasiones quare fuerit impeditus, dum
tamen post summonitionem & non ante. Item si
sponte in casum fortuitum inciderit, ubi possit casum
de facili evitare. Item refert utrum acciderit ei casus
fortuitus ante diem summonitionis, vel post diem. Si
autem post diem, competit ei excusatio modo quo præ-
dictum est, vel non competit. Item si rationem præ-
tendat quòd venire non possit ex certa causa, vel quia
pons solutus fuit, & eodem die transivit alius, & statim
post horam vel in eadem hora qua ipse præsens fuerit,
non excusatur. Si autem propter inundationem aqua-
rum, & alius eodem die & eadem hora, dum tamen sine
discrimine & difficultate transierit, non erit locus ex-
cusationi. Item si tempestas ingruerit, tunc videndum,
utrum eodem die & hora debita aliquis per cymbam
vel per navem transierit, & ita non erit locus excu-
sationi. Et unde considerata sunt causa, tempus,

¹ "De excusationibus," MS. |
Rawl. C. 160.

² "Item poterit esse summonitus
"in causa," MS. id.

the party summoned could have come seasonably by a circuitous road, he is not excused by such a fortuitous occurrence.

Likewise he is not excused, if he has set out from his residence later than was expedient, because, if he had set out sooner, he might have come conveniently, nor would the accidental occurrence have impeded him. In the same manner, if he had set out from his residence sooner than he ought to have done, and has met with a fortuitous accident, this will have to be set down to his own account, because if he had set out at a suitable time, he would not have met with the fortuitous accident. Likewise the person summoned will be able to assign his own reason wherefore he was hindered, and in what way, as if there have been any contentions or occasions whereby he was hindered, provided they have happened after the summons and not before. Likewise if he has fallen of his own accord into a fortuitous accident, when he might easily have avoided the accident. Likewise it matters whether the fortuitous accident has befallen him before the day of the summons or after the day. But if after the day, he is entitled to an excuse in the manner above said, or he is not entitled. Likewise if he holds out a reason that he could not come for a certain cause, as because a bridge was broken down, and on the same day another person has passed, and immediately after the hour or in the same hour, in which he was himself present, he is not excused. But if on account of an inundation of waters, and another person on the same day and at the same hour, provided however without danger or difficulty, has passed, there will be no place for an excuse. Likewise if a tempest has supervened, then it is to be seen, whether on the same day and at the hour due any one has made the passage in a boat or in a ship, and thus there will be no place for an excuse. And hence are to be considered, the cause, the time, the place, the day, and the hour;

2.
Concern-
ing the ex-
ceptions of
a person
f. 337 b.
not coming
to judg-
ment after
a sum-
mons.

locus, dies, & hora, & infinitæ sunt causæ quibus quis absentiam suam poterit excusare. Cùm igitur competat alicui aliqua prædictarum excusationum, vel alia quæ sufficiens sit, sive tenens fuerit ultra mare, sive citra, sive probata fuerit summonitio sive non, cùm venire non possit, oportet mittere excusatorem aliquem qui dicitur essoniator, & qui prætendat excusationem summoniti esse talem quòd venire non possit per hæc verba.

3.
Verba excusationis proferenda ab essoniatore in essonio de malo veniendi.

Quòd, cùm dominus suus in veniendo esset versus curiam (si essoniatus fuerit de malo veniendi, sive de ultra mare, sive de citra), quòd talis infirmitas ei devenit postquam fuit in veniendo versus curiam à domicilio proprio, vel alieno, citra mare, vel ultra, quòd venire non potest, pro lucro nec pro damno, quod vulgari-ter dicitur, pro lucrari nequè pro perdere, quod quidem dicat se paratum docere. Sed quia probatio non incumbit essoniatori, sed domino, nec scitur utrum verum sit essonium vel non, quòd summonitus illud advocare voluerit. Ideo ne essoniator oneretur cautione fidejussoria, scilicet plegiorum, quæ quidem gravis esset minimis personis & onerosa, nec depereat excusatio, constituitur quòd soli fidei essoniatoris credatur, quod quidem non est concedendum personis majoribus, sicut sunt illi qui tenent in baronia, qui causationem inveniant fidejussoriam, ne judicia sint delusoria: facilius enim inveniunt plegios & securitatem, & maxime cautionem fidejussoriam majores quàm minores. Cùm autem hujusmodi essoniatores causam absentiae & excusationem sic prætenderint, non sufficit quòd dicant ita esse, nisi securitatem inveniant hoc

and the causes, for which a person may excuse his absence, are infinite. When therefore a person is entitled to make any of the aforesaid excuses, or any other which may be sufficient, whether the tenant has been beyond the sea or within it, whether the summons has been proved or not, when he cannot come, it is incumbent that he send some one to excuse him, who is called an essoiner, and who alleges that the excuse of the person summoned is such that he cannot come in these words :

That, when his lord was on his way coming to the court (if he has been essoined for sickness in coming whether from beyond the sea or from within it) that such an infirmity has come upon him after he was on his way coming towards the court from his own residence or from another person's, within the sea or beyond it that he cannot come, to gain or to lose, which is commonly termed *pro lucrari* or *pro perdere*, which indeed he says that he is prepared to prove. But because the proof is not incumbent on the essoiner, but on his lord, nor is it known whether the essoin be true or not, that the person summoned is willing to avow it. Likewise that the essoiner may not be burdened with finding bail and security, forsooth of sureties, which would be grievous and onerous to persons of humble station, and that the excuse may not perish, it is established that credit is to be given to the faith alone of the essoiner, which is not to be granted to persons of higher station, such as are those who hold in barony, who must find bail and security lest the judgments should be illusory, for persons of greater estate find more easily than persons of lower estate, bail and security, and particularly caution that the parties shall be forthcoming. But when essoiners of this kind have represented the cause of absence and the excuse, it is not sufficient that they say that it is so, unless they find security to prove it. But since

3.
The words
of the ex-
cuse to be
uttered by
the essoi-
ner in an
essoin for
bed-sick-
ness.

f. 338.

probare. Sed cùm non sit procurator ejus, qui ipsum essoniatores destinavit, & ideo ad ipsum non pertineat probare statum vel factum alienum, nec attornato factum domini principalis,¹ & ideo dominus faciet legem si hoc commodè fieri potest, & si dominus non venerit, attornatus jurabit in animam domini litis. Ideo affidabit essoniator, quòd habebit dominum suum ad alium diem ad warrantizandum dictum & essoniũ suum, & ad probandum per sacramentum quòd tali infirmitate detentus fuit cùm esset in veniendo versus curiam, q venire non poterit² &c. ut supra. Et ad quem diem si venerit, warrantizet essonium ita q per sacramentum probet se esse ita impeditum secundum q essoniator suus in essonio suo proponendo exposuit. Sed videndum erit utrum probatio excusationis fieri debet judici, vel parti, quia si judici, remittere eam non poterit si voluerit ppter dilationem quæ sequeretur, & multitudinem plationum. Si autem fieri debeat parti & non judici, non sine juris injuria poterit remitti sine consensu partis. Cùm igitur contingat aliquem abesse ex aliqua prædictarũ causarum, vel aliqua alia causa, mittat essoniatores suum qui ipsum excuset, & excusationem suam prætendat, secundum quod prædictum est. Habent etiam essonia ordinem sicut & actiones. Et itaque³ essonium de malo veniendi infra regnum, si quis ita infirmatus fuerit in itinere versus curiam, quòd venire non possit nec pro lucrari nequè pro perdere. Et tale essonium de malo veniendi sequitur quandoquè essonium de malo lecti & de reseantisa, ubi agitur de ipso jure. Cùm autem quis ita essoniatus fuerit uno istorum vel utroquè infra regnum, non

¹ "domino principali," MS. Rawl. C. 160.

² "potuit," MS. id.

³ "Est itaque," MS. id.

he is not the agent of the person, who has destined him to be his essoiner, and therefore it does not pertain to him to prove the state or act of another, nor does it pertain to an attorney to prove the act of the lord his principal, and accordingly the lord shall make his law, if this can be done conveniently, and if the lord has not come, the attorney shall swear upon the soul of the lord of the suit. Accordingly the essoiner shall pledge his faith that he will produce his lord on another day to warrant his statement and his essoin, and to prove by his oath, that he was detained by such an infirmity, when he was on his way coming to the court, that he could not come &c. as above. And on which day if he has come, let him warrant his essoin in such manner, that he should prove by his oath, that he was hindered according to what his essoiner has set forth in propounding his essoin. But it will have to be seen whether the proof of the excuse ought to be made to the judge or to the party, because if to the judge, he could not remit it, if he wished, on account of the delay, which would follow, and the multitude of proofs. But if it ought to be made to the party and not to the judge, it cannot without injury to right be remitted, unless with the consent of the party. When therefore it happens, that any one is absent from any of the aforesaid causes, or from some other cause, let him send his own essoiner, who may excuse him and allege his excusation, according to what has been said. Essoins have also their order just as actions. There is thus an essoin on account of sickness on the way within the kingdom, if any one has become infirm on the road to the court, that he could not come neither *pro lucrari* nor *pro perdere*. And such an essoin of sickness on the way is followed sometimes by an essoin of bed-sickness and of staying in doors, where the action is concerning the right itself. But when any one has been essoined for one of these causes or for both within the kingdom, it is not allowed

f. 338.

permittitur essoniato postmodum se transferre extra regnum ut sibi acquirat dilationem per essonium de ultra mare. Sunt quidem de ultra mare plura genera, scilicet de ultra mare & citra mare Græcorum, & est essonium de ultra mare Græcorum & de citra mare Græcorum, sicut in peregrinatione versus Sanctū Jacobum, vel ppter aliquam aliam necessitatem, sicut exercitus vel hujusmodi in Allemania vel Hispania vel hujusmodi, in quibus essoniis dabitur dilatio ad minus quadraginta dierū & unius flud & unius ebbæ ad excusationē essoniati de simplici essonio de ultra mare. Si autē fiat mentio de aliquo loco remoto ppter aliquam necessitatē (ut p̄dictum est), dabitur dilatio major p voluntate & arbitrio justitiariorū, secundum q viderint expedire secundū distantīā locorū. In hoc casu induciæ sunt arbitrariæ, dum tamen ad minus quadraginta dierū ut supra. Et eodē modo fiat infra regnū in essoniis supradictis secundū locorum distantias, dum tamen ad minus quindecim dierū. Item est essonium de ultra mare,¹ ultra mare Græcorum, ut si quis profectus fuerit in peregrinatione usquē ad Terram Sanctam. Et quo casu distinguendum erit utrum in simplici peregrinatione versus Terram Sanctā, vel in generali passagio. Si autem in simplici peregrinatione, dabitur ei ad minus annus integer & unus dies, & sic dantur essoniato de ultra mare & citra mare Græcorum quadraginta dies ad minus & unum flud² & unum ebbe. Et postea cūm venerit in regnum, habebit essonium de malo veniendi, quod continet ad minus quindecim dies, & postmodū in suo casu essonium de malo lecti ad breve de recto, & unde quibusdam videt̄ (quod non est verum) quod dari debent

Britton, vi.
ch. vii. § 3.

¹ "de ultra mare" omitted MS. | ² "flode," MS. id.
Rawl. C. 160.

to the person, who has been essoined, afterwards to transfer himself out of the kingdom that he may obtain a delay by an essoin for being beyond the sea. There are several kinds of essoins for being beyond the sea, and there is the essoin for being beyond the sea of the Greeks and for being within the sea of the Greeks, as on a pilgrimage to St. James, or on account of some necessity, as of serving in the army or of like sort in Germany or in Spain or in such countries, in which essoins a delay shall be allowed of at least forty days, and one one flood and one ebb, for the excusation of the person essoined by a simple essoin of being beyond the sea. But if mention be made of some remote place on account of some necessity (as abovesaid), a longer delay will be allowed according to the will and the discretion of the justiciaries, according to what they may consider to be fitting according to the distance of the localities. In this case the respite is arbitrary, provided however that it is a respite of forty days at least as above. And in the same way let it be done within the kingdom in the essoins abovesaid according to the distances of the localities, provided it be for at least fifteen days. Likewise there is the essoin of being beyond the sea, the essoin of being beyond the sea of the Greeks, as if any one has set forth on a pilgrimage to the Holy Land. And in which case a distinction must be made whether he has set out on a simple pilgrimage to the Holy Land, or on a general passage. But if on a simple pilgrimage there shall be allowed to him at least a whole year and one day, and so essoins are allowed for being beyond the sea and within the sea of the Greeks for forty days at least and one flood and one ebb. And afterwards when he has come into the kingdom, he shall have an essoin of sickness on the way, which comprises at least fifteen days, and afterwards in his own case an essoin of bed-sickness to a writ of right, and hence it seems to some (which is not true) that there ought to be allowed to a

f. 338 b. essoniato de peregrinatione versus Terram Sanctam annus & dies, & de ultra mare Græcorū, & postea quadraginta dies & une flud¹ & une ebb. de simplici essonio de ultra mare, & sic essoñ de malo veniendi in regno, & essoñ de malo lecti in suo casu, quia qlibet essoñ habet suum terminū p se ex alia parte. Si autē essoñ fiat de ultra mare Græcorum & de generali passagio, tunc remanebit loquela sine die, ubi videlicet essoñ non cōprehendit essoniatum infra regnum, & hoc ppter privilegium cruce signatorū, cū non possit de eorum reversione certus terminus cōprehendi ppter verba decreti domini papæ, q̄ donec de ipsorum obitu vel reditu in regnū certissimè cognoscatur, omnia sua integra remaneant & quieta consistent. Est igitur ordo essoniorum talis, q̄ ita fieri possunt descendendo a Terra Sancta usquē in regnum, sed non e contrario: ut si quis regno essoniatus fuerit de malo veniendi, nullum de cætero habebit de ultra mare. Et si de ultra mare simpliciter, de Terra Sancta nullum habebit essonium, approximare enim possunt regno cū fuerint implacitati, elongare autem non. Est etiam aliud genus essonii non de malo veniendi, sed de servitio dñi regis, ut si quis de necessitate fuerit detentus in servitio domini regis ppter quod venire non possit ad curiam vocatus, & aliquando fit huiusmodi essonium de servitio domini regis in regno, & quandoquē ultra mare. Et de huiusmodi essonio de servitio domini regis, quandoquē pcedit essonium simpliciter de malo veniendi, et quando-

¹ "flodel," MS. Rawl. C. 160.

person who is essoined for a pilgrimage to the Holy Land a year and a day, and for a pilgrimage beyond the sea of the Greeks, and afterwards forty days and one flood and one ebb for a simple essoin for being beyond the sea, and so an essoin for sickness on the way within the kingdom, and an essoin of bed-sickness in his own case, because each essoin has its own term by itself upon the other part. But if the essoin be made for being beyond the sea of the Greeks and on account of a general passage, then the trial shall be stayed without a day, where for instance the essoin does not comprise the essoinee within the kingdom, and this on account of the privilege of those who are marked with the cross, since no certain term can be comprised concerning their return on account of the words of the decree of the lord the pope, that until most certain information be received concerning their death or their return into the realm, all their affairs shall remain entire and be quietly stationary. There is thus an order of essoins of this character, which may be made by descending from the Holy Land down to the realm, but not in the contrary manner; as if a person has essoined himself for sickness on his way within the realm, he shall not have besides an essoin for being beyond the sea; and if for being beyond the sea simply, he shall not have an essoin for being in the Holy Land, for they may come nearer to the realm after they have been impleaded, but may not enlarge their distance from it. There is also another kind of essoin not for sickness on the way, but for the service of the lord the king, as if anyone has been from necessity detained by the service of the lord the king, wherefore he could not come into court when called, and an essoin of this kind is made for the service of the lord the king sometimes in the realm, and sometimes beyond the sea. And concerning an essoin of this kind for the service of the lord the king, sometimes the essoin proceeds simply concerning sickness in coming, and sometimes

què subsequitur semel, et quandoquè sæpius secundū necessitatē habitam in servitio p̄dicto, & valebit essoñ, quoties quis se essoñ de servitio domini regis, dum tamen warrantum habeat ad quemlibet diem breve domini regis, cūm servitium domini regis nulli debeat esse damnosum. Warrantizatur autem essonium multipliciter. Quandoquè per breve dñi regis, sicut de servitio suo, ubi non est necesse jurare, cūm dominus rex hoc testatur per literas suas q̄ sic detentus est in servitio suo. De servitio autem regis videndum, cui competat essonium, ad quod distinguendum utrum quis teneatur de necessitate ad tale servitiū, vel si fuerit cum aliquo qui tenetur sicut miles, vel serviens de familia, omnibus istis debet subveniri. Item si quis non teneatur p̄dictis rationibus, sed hoc affectaverit ut esset absens cūm non teneretur, tali non subvenit rex nisi de voluntate & gratia sua, quia non debet servitium dñi regis alicui esse damnosum. Item videndum, utrum essoniatus de servitio dñi regis venire potuit commodè vel non. Item cūm venire non posset commodè, nec possit mittere, nec breve dñi regis in se contineat veritatem, cūm hæc omnia facere posset, in hoc sibi caveat cancellarius. Item videndum, utrum præventus esset tali sūmonitione antequàm profectus esset in servitio dñi regis, & ita q̄ commodè facere poterit attornatum vel non, vel præventus sūmonitione exercitus ante sūmonitionem placiti, quòd attornare vel attornatum facere non potuit commodè, quia præcipit dominus rex q̄ statim visis literis vel cum omni

Britton, vi.
ch. viii. § 1.

it follows once, and sometimes more often according to the necessity which has arisen in the service of the lord the king, and the essoin will be valid as often as a person has essoined himself for the service of the lord the king, provided however that he have as a warrant for any day a writ of the lord the king, since the service of the lord the king should not be damaging to any one. But an essoin is warranted in many ways. Sometimes by a writ of the king, as concerning his service, where it is not necessary to swear, since the lord the king attests this fact by his letters, that he has been thus detained in his service. But concerning the service of the lord the king it is to be seen, who is entitled to an essoin, in regard to which a distinction is to be made whether a person is bound of necessity, or if he has been with some one who is bound as a knight or a servant of the family, all such persons ought to be helped. Likewise if a person is not bound for the aforesaid reasons, but has affected it, that he might be absent when he was not bound, the king does not help such a person except of his pleasure and grace, because the service of the lord the king ought not to be damaging to anyone. Likewise it is to be seen whether a person essoined on account of the service of the lord the king could have come conveniently or not. Likewise when he could not come conveniently, nor could send any one, and the writ of the king does not contain in itself the truth, when he could do all these things, let the chancellor take care for himself in this matter. Likewise it is to be seen whether he has been anticipated by such a summons before he set forth on the service of the lord the king, and so that he could easily have constituted an attorney or not, or had been served with a summons to the army before the summons of the plea, so that he could not have conveniently attoured or appointed an attorney, because the lord the king enjoins "that forth-
" with upon the sight of his letters and with all haste

f. 339. festinatione sub brevi tempore, quòd atturnatum facere non potuit. Item si in servitio regis non ita remotus, quin sine periculo corporis vel damno domini regis venire possit, non aretatur: non enim debet warrantia de servitio dñi regis ei qui placitat esse injuriosa, non magis quàm ei qui implacitatur damnosa. Sed quoniam sunt variæ causæ excusationum (secundum q predictū est), & ex diversis causis & variis excusationum varia sequuntur essonia & diversa, ideo varietates essoniorum distinguamus per ordinem, & imprimis dicamus de essoniis de malo veniendi, q quidem multiplex est.

CAP. III.

1. Essoniorum brevis divisio, quia aut est de malo veniendi aut de malo lecti: item essoniū de malo veniendi ita subdividitur, quia aut est de ultra mare, aut de citra mare. Item de ultra mare excusatur quis per essoñ de servitio dñi Regis æterni, sicut de Terra Sancta, habita tamen distinctione utrum peregrinatio ad Terram Sanctam simplex sit vel passagiū generale. Si autem simplex, dabitur essoniato terminus unius anni & unius diei. Si autē generale passagiū, poni debet loquela sine die quousq̃ essoniatus redierit, & donec de ipsius obitu vel reditu certissimè cognoscatur ppter privilegium cruce signatorū, dum tamē talis non sit sumonitione præventus, quo casu attornatū faciet vel remanebit indefensus.

De excusa-
tionibus
non venien-
tis post
summoni-
tionem per
essonium
de malo
veniendi, et
de divisione
essonio-
rum.

‘ in a short time,” so that he could not appoint an attorney. Likewise if he has been in the service of the king not so far remote, but that he could come without bodily danger to himself and without damage to the lord the king, he is not thereby kept away, for the warrant concerning the service of the king ought not to be injurious to him who impleads, any more than it ought to damage him who is impleaded. But since there are various causes of excusation (according to what has been said above), and from the various and divers causes of excusations various and divers essoins follow, therefore let us distinguish the varieties of essoins in order, and in the first place let us speak of the essoin of sickness in coming, which is of many kinds. f. 339.

CHAPTER III.

The short division of essoins is because either of sickness in coming or of bed-sickness. Likewise an essoin of sickness in coming is divided thus, for it is either for being beyond the sea or for being within the sea. Likewise for being beyond the sea one is excused by an essoin for the service of the Lord the Eternal King, as in the Holy Land, a distinction however having been made whether the pilgrimage to the Holy Land be simple or a general passage. But if it be simple, there shall be granted to the person essoined the term of one year and one day. But if it be a general passage, the trial should be postponed without a day, until the person essoined has returned, and until it be known for a certainty concerning his death or his return, on account of the privilege of those who are marked with the cross, provided however such a person be not anticipated by the summons, in which case he shall constitute an attorney or shall remain undefended. 1. Of the excusations of him who does not come after a summons by an essoin of sickness in coming, and of the division of essoins.

2.
Qualiter
irrotulatur
essonium
de malo
veniendi.

Et sic fiat irrotulatio hujusmodi essoniorū. A. qui pfectus est ultra mare in generali passagio versus Terram Sanctam versus B. de tali placito per talem. Si autem simplex sit passagium & peregrinatio, tunc sic, A. qui pfectus est peregrè versus Terram Sanctam ante suṁonitionem, vel q nulla fiat mentio de suṁonitione, versus B. de tali placito per talem. Et si simplex sit peregrinatio & ultra annum & diem moram fecerit ulteriorem, excusatur ejus absentia (secundū quosdam) per essonium simplex de ultra mare, & sic habebit spacium xl. dierum & unius flud & unius ebbæ, & si adhuc moram longiorem protraxerit, habebit simplex essonium de malo veniendi de citra mare, per quod habebit ad minus spacium xv. dierum, quod verum est.

- Ad minus habebunt essoniati tantum tempus & ex causa majus tempus, secundum discretionem justiciarū. Et in hoc sunt dilationes arbitrariæ. Et quid si tunc non venerit? Procedatur ad defaltam contra eum, nisi forte contingat talem essoniari de morte ad cautelam. Si quis autem essoniatus fuerit essonio de ultra mare citra mare Græcorum, quòd profectus sit in servitio Domini Regis æterni in peregrinatione alia quàm ad Terram Sanctam, sicut apud Sanctum Jacobum vel alibi, habebit (secundum q prædictum est) spatium prædictū quod competit de ultra mare, & similiter simplex essonium de malo veniendi de citra mare, & hæc omnia habebit ille qui essoniatus est de ultra mare in servitio Domini Regis æterni. Si autem suṁonitione præventus fuerit antequam iter arripuerit versus Terram Sanctam, vel ultra mare, non dabitur ei nisi simplex essonium de malo veniendi, & hæc omnia vera sunt, si debitus ordo essoniorum observetur, quia

f. 339 b.

And so let there be an enrolment of the essoins in this manner. A. who has set forth beyond the sea in a general passage to the Holy Land against B. in such a plea through so-and-so. But if the passage and the pilgrimage be simple, then thus, A, who has set out on a pilgrimage towards the Holy Land before the summons, or that there be no mention of the summons, against B in such a plea through so-and-so. And if the pilgrimage be simple and he has prolonged his stay beyond a year and a day, his absence is excused (according to some) through a simple essoin of being beyond the sea, and so he shall have a space of forty days and one flood and one ebb; and if he has prolonged his stay still further, he shall have a simple essoin of sickness on the way on this side of the sea, through which he shall have at least a space of fifteen days, which is true. The parties essoined shall have at least so much time, and upon cause shown more time according to the discretion of the justiciaries. And in this matter the delays are discretionary. And what if then he should not come? Let proceedings be taken against him for default, unless by chance it happen that he has been essoined for death by way of precaution. But if a person has been essoined with an essoin of absence beyond the sea within the sea of the Greeks, to wit, that he has set forth in the service of the Lord the Eternal King in another pilgrimage than that to the Holy Land, as to St. James or elsewhere, he shall have (according to what has been said above) the space aforesaid, which is allowable for absence beyond the sea, and in like manner a simple essoin of sickness in coming from within the sea, and all these things the person shall have, who has been essoined for being beyond the sea in the service of the Lord the Eternal King. But if he has been anticipated by a summons before he has began his journey towards the Holy Land or beyond the sea, he shall have nothing allowed to him but a simple essoin for sickness in coming, and all these things are true, if

2.
In what
way an
essoins for
absence
beyond the
sea is en-
rolled.

f. 339 b.

esto q, cùm quis ante sumōnitionem profectus sit & competant ei omnia prædicta essonia, & primò se faciat essoniari de simplici essonio de malo veniendi, non habebit ulteriùs regressum ad alia essonia de ultra mare. Et est ratio, quia si se essoniat de malo veniendi simpliciter, concedit per tale essonium q fuit in veniendo à domicilio suo in Anglia, & infirmatus per viam veniendo versus curiam, q ad curiam venire non potuit, & unde si postea se essoniare voluerit de aliquo prædictorum modorum de ultra mare, non allocabitur ei essonium, quia post tale essonium de malo veniendi non debet quis se transferre ad partes transmarinas, ut per hoc sibi acquirat posteriores dilationes, cùm lites potius restringendę sunt quàm laxandę. Et eodem modo si quis simpliciter essoniatus fuerit de ultra mare sine aliqua adjectione, cùm ei competeret essonium de Terra Sancta, nunquam ei postmodum allocabitur essonium de Terra Sancta, quia postquàm taliter se essoniaverit sub certo loco & à propinquo, ad remotiora se transferre non debet, ut inde sibi acquirat posteriores dilationes. Nunquam verò pro aliquo essonio de ultra mare remanebit loquela sine die, nisi quis profectus fuerit in Terram Sanctam pro passagio generali hoc modo.

3.
 Essonia de
 servitio
 domini
 regis de
 ultra mare

Essonia vero de malo veniendi de citra mare simplicia sunt, & quandoque præcedunt hujusmodi essoniis essonia de servitio domini regis de citra mare, & quæ non sunt essonia de malo veniendi, quia non est talis

the due order of essoins be observed, for let it be, that when a person has set out before the summons and he is entitled to all the aforesaid essoins, and in the first place he causes himself to be essoined with the simple essoin of sickness in coming, he shall not have further any recourse to the other essoins of absence beyond the sea. And the reason is, because if he essoins himself simply for sickness in coming, he admits by such an essoin that he was on his way coming from his residence in England and was invalided on his way in coming to the court, so that he could not come to the court, and hence if he shall have afterwards desired to essoin himself in any of the aforesaid ways of being beyond the sea, the essoin shall not be allowed to him, because after such an essoin of sickness in coming a person ought not to transfer himself to parts beyond the sea, that he may thereby obtain for himself further delays, since lawsuits are rather to be restrained than facilitated. And in the same way if a person has been simply essoined for absence beyond the sea without any addition, when he was entitled to an essoin for being in the Holy Land, there will never be allowed to him an essoin for absence in the Holy Land, because after he has in such manner essoined himself in respect of a certain place and from a near place, he ought not to transfer himself to more remote parts, that he may thereby obtain further delays. But the trial will never be stayed indefinitely for any essoin of absence beyond the sea, unless a person has set out for the Holy Land on a general passage in this manner.

But essoins for sickness in coming from some place within the sea are simple, and sometimes this kind of essoins are preceded by essoins for the service of the lord the king within the sea, which are not essoins for sickness in coming, because such a person is not invalided by the way in coming to the court, but he is detained by the service of the lord the king, so that he cannot come. For essoins of this kind may precede and may follow, not

3.
Essoins for
the service
of the lord
the king
beyond
the sea.

in veniendo versus curiam infirmatus per viam, sed per servitium domini regis detentus, quòd venire non possit. Præcedere enim poterunt hujusmodi essonia & subsequi non semel sed sæpius, quamdiu quis fuerit in servitio domini regis, dum tamen habet ad manum ad quemlibet diem warrantum suum, secundum distinctio- nem prenotatam. Et quando quis se essoniaverit de servitio domini regis, admitti debet essonium & allo- cari, & dies dari, cùm de voluntate domini regis non sit disputandum, & si ad diem datum warrantum non habuerit, indefensus remanebit.

4.
Placita
specialiter
excepta, in
quibus non
jacet es-
sonium de
servitio
regis.

- Sunt placita tamen quædam specialiter excepta, in quibus non jacet essonium de servitio domini regis propter necessitatem, ut in assisa ultimæ præsentatio- nis: ut de termino S. T. anno regis H. xiv., in fine rotuli, in coñ Suff., assisa ultimæ præsentationis de ecclesia de Trillaw. Ad idem facit quod habetis in rotulo de banco anno regis H. xxxviii. in comitatu Kanc. inter S. Cant. archiepiscopum & Robertum de Sancto Johanne de ecclesia de Eniford,¹ & talem ne- cessitatē inducit lapsus temporis. Item nō jacet essoñ de servitio dñi regis quādoq̃ ppter favorē, sicut in causa dotis, quia statim post essoñ legitima de malo veniendi nisi veniat sumōnitus, pcedatur ad defaltam.
- f. 340. Item ppter favorem minoris ætatis quādoq̃ (& secun- dum quosdam), sicut in assisa mortis antecessoris. Item quādoq̃ in odium spoliationis, & generaliter in omni- bus assisis capi poterit per defaltam, cùm tantum ope- retur absentia summoniti quantum præsentia. Item non jacet de jure quāvis aliquando de gratia in per- sona ejus, qui non est immediate in servitio cum ipso rege sed cum alio. Item nec in psona ejus, qui affec- taverit esse in ejus servitio, cùm ad hoc non teneatur. Item nec in persona ejus, qui continuè & assiduè est

Britton, vi.
ch. viii. § 1.

¹ "Eyneford," MS. Rawl. C. 160.

once but repeatedly, as long as a person may be in the service of the lord the king, provided however that he have at hand his warrantor for a certain day, according to the distinction previously noted. And when a person has essoined himself for the service of the lord the king, his essoin ought to be admitted and allowed, and a day ought to be given to him, since no dispute is to be permitted concerning the will of the lord the king, and if upon the day given to him he shall not have had a warrantor, he will remain undefended.

There are some pleas specially excepted, in which an essoin does not lie for the service of the lord the king, on account of necessity, as in an assise of last presentation, as in Holy Trinity term in the fourteenth year of king Henry in the county of Kent, between Stephen, archbishop of Canterbury, and Robert of St. John, concerning the church of Eniford, and lapse of time causes such necessity. Likewise an essoin for the service of the lord the king does not lie sometimes on account of favour, as in a cause of dower, because immediately after the legitimate essoins for sickness in coming, unless the party summoned comes, let proceedings be had to a default. Likewise on account of favour for minority sometimes (and according to some), as in an assise of mortdancerster. Likewise sometimes in hatred of the spoliation, and generally in all assises it may be taken by default, since the absence of the party summoned operates as much as his presence. Likewise it does not lie of right, although sometimes of grace, in the person of him who is not immediately in service with the king himself, but with another person. Likewise not in the person of him who has volunteered to be in his service, when he is not bound to it. Likewise not in the person of him, who is continuously and assiduously in the service of the lord the king, except at times when they have been in an expedition. Likewise it does not lie in the person of an attorney, although he may represent the person of his lord, because such a person ought to be appointed an

4.
Pleas specially excepted, in which an essoin for the service of the lord the king does not lie.

f. 340.

in servitio domini regis, nisi temporibus quibus fuerint in expeditione. Itē nō jacet in psona attornati, quamvis personam domini reſſentet, quia talis fieri debet attornatus, qui sequi possit & velit, alioquin sibi imputari debet qui talem attornatum elegit. Item non jacet essoñ de servitio domini regis in psona ejus qui pars esse non possit in judicio, sicut nec aliud essonium, sicut in persona juratorum. Item quatuor militum ad testificandum visum vel statum alicujus. De quatuor militibus vero missis in cōm cum recordo ad audiendū judicium suum (cum sint quasi partes in judicio) credo aliud esse dicendū. Warrantia vero de servitio domini regis nō est concedenda in omnibus, nec sine causa rationabili, cū si passim & indifferenter concedatur, possit verti in alterius præjuditium, & non potest rex aliquid cōcedere nisi id q de jure fieri potest, & cū aliquando de voluntate domini regis cōcedatur, non erit omnino p justic. quassanda, sed voluntas regis expressa inde erit expectanda.

5.
Si quis
implacita-
tus fuerit
a duobus,
et ad unum
placitum
essoni-
averit se de
malo lecti
et ad aliud
de malo
veniendi.

Est etiā simplex essoniū de malo veniendi q excusat ad tēpus, & q aliā habet naturā in multis qm essonia supradicta, s. quis legitimè sumōnitus vel etiā nō legitimè infirmatus fuerit p viā q venire nō possit, & destinaverit aliquē ad excusandā suā absentia, qui sic pponat essoniū suū corā justic. si fuerit de modo requisitus & dicat: Essonio talem dominū meū, q cum esset in veniendo versus curiā, talis infirmitas accidit ei per viam, q venire non potest p lucrari nec p perdere, & hoc paratus sum docere, sicut curia cōsideraverit &c. Qui quidē si interrogatus dixerit q reliquit eum domi, essoniū (secundū quosdā) nō allocabitur, nisi hoc sit de necessitate, q esse poterit, licet quis ā domicilio suo non recedat, ut si alicui in uno placito adjudicatus sit languor, & in alio summonitus sit ad

attorney, who can and will pursue, otherwise he who has elected such an attorney must impute to himself the consequences. Likewise an essoin for the service of the lord the king does not lie in the person of him, who cannot be a party in the judgment, just as no other essoin, as in the person of the jurors. Likewise of the four knights to testify the view or state of anyone. But concerning the four knights sent into the county with a record to hear their judgment (since they are as it were parties in the judgment) I believe it is to be said otherwise. But a warrant concerning the service of the lord the king is not to be granted in all matters, nor without a reasonable cause, since if it were to be granted everywhere and indifferently, it might be turned to the prejudice of another, and the king cannot grant anything, except what may be done of right, and when anything is granted of the pleasure of the lord the king, it will not be allowed to be quashed by the justiciaries, but the express will of the king will have to be awaited.

There is also a simple essoin for sickness in coming which excuses for a time, and which has another nature in many respects than the essoins above mentioned, to wit, if a person lawfully summoned or even not lawfully summoned has been invalidated on the way, that he could not come, and has despatched some one to excuse his absence, who thus propounds his essoin before the justices, if he has been required to state the mode of it, and says, I essoin so-and-so my lord, that, when he was coming to the court, such an infirmity fell upon him by the way, that he cannot come *pro lucrari* nor *pro perdere*, and this I am prepared to show according as the court has determined, &c. Who indeed, if upon being questioned he has said that he left him at home, the essoin (according to some) shall not be allowed to him, unless it be from necessity, which may be, although a person does not withdraw himself from his residence; as if languor be adjudged to anyone in one plea, and in another he has been summoned to answer and he is

5.
If a person has been impleaded by two parties, and he has essoined himself to one plea for bed-sickness, and to another for sickness in coming.

respondendū & cōpetat ei essoniū de malo veniendi, si sine licentia surrexerit, amittere poterit & attornatū facere nō possit. Admittitur igitur essoniū de necessitate, licet in veniendo nō fuerit infirmatus, & etiā magis excusat lāguor qm malū trāsiens. Eodē modo dici poterit si vocatus fuerit in aliquo placito ad warrantū.

6.
Si duo
placita, de
quibus
unum de
malo lecti,
et aliud de
malo veni-
endi.

f. 340 b.

Itē allocatur quandoq̃ essoniū, q̃ aliās non esset allocatū, ut si in uno placito lāguor fuerit ei adjudicatus, & in alio placito omnia habuerit essonia, & ad diē sumōnitionis suæ de facto se essoniaverit cū venire nō possit, nec attornatū fecerit, allocabitur ei essoniū ppter talē necessitatē de cōsilio curiæ, licet nō possit de jure. Eodē modo si vir & uxor implacitati fuerint & ambo essoniati fuerint de malo veniēdi, & unus illorū postea se essoniaverit de malo lecti, & cū lāguor ei sit adjudicatus alius cōparuerit, habebit diē ex tali causa, & ad diē illū essoñ vel diem diffusum quousq̃ languor p̃terierit, sed nūquā habebit essonium super essoñ in tali necessitate, quia sic cadere posset in defaultam.

7.
Quis se
possit
essoniare.

Itē quis se possit essoniare videndū, & quando, & in quibus placitis, & quādo jacet essoñ, & quādo nō, & quid juris, si tenens fecerit attornatos plures vel unū. Itē si plures sint petentes & unus tenens vel è converso vel plures petentes vel plures tenentes, & aliquis eorū defaultā fecerit. Itē si tenens unus vel plures warrantū vocet unum vel plures, & aliquis eorum defaultā fecerit unus vel plures. Itē qualiter essonia judicantur. Itē qualiter redimūtur. Quis se essoniare possit videndū & quis non? Et sciendū q̃ se essoniare poterit quilibet cui non phibetur, tam masculus quā

entitled to an essoin for sickness in coming, if he has left his bed without permission, he may lose his essoin and he cannot constitute an attorney. The essoin is therefore admitted of necessity although he has not been invalided in coming, and languor excuses even more than a passing illness. In the same way it may be said, if he has been called in any plea to warrant.

Likewise an essoin is sometimes allowed which at other times would not be allowed, as if in one plea languor has been adjudged, and in another plea he has every essoin, and on the day of his summons he has essoined himself in fact when he could not come, and he has not constituted an attorney, there will be allowed to him an essoin on account of such necessity upon the advice of the court, although he could not have it of right. In the same manner if a husband and wife have been impleaded, and both have been essoined for sickness in coming, and one of them has afterwards essoined himself for bed-sickness, and when languor has been adjudged to him the other has appeared, he will have a day from such a cause, and on that day an essoin or a day at large until the languor has passed away, but he shall never have an essoin upon an essoin in such a necessity, because he might thus fall into a default.

6.
If there be two pleas, of which one is essoined for bed-sickness and the other for sickness in coming.

f. 340 b.

Likewise we must see who may essoin himself, and when, and in what pleas, and when the essoin lies, and when not, and what is his right, if a tenant has constituted several attorneys or one. Likewise if there be several claimants, and one tenant, or conversely either several claimants or several tenants, and one of them has made default. Likewise if one or several tenants call one or several warrantors, and some of them have made default one or more. Likewise in what way essoins are judged. Likewise in what way they are redeemed. We must see who can essoin himself and who not. And it is to be known that any one may essoin himself who is not prohibited,

7.
Who may essoin himself.

foemina, dum tamē plenæ ætatis extiterit. Minor autē se essoniare non poterit de quo constiterit q minor sit, nec etiam cōtra ipsum admittitur essoniū ab aliquo majore & maximè in assisa, quia cū major p̄sens sit nihil dicere possit cōtra assisam quare remaneat, & si forte cōtingat q minor se essoniaverit cū tenens fuerit in loquela, in quibus infra ætatem respondere teneatur, ubi feoffatus fuerit infra ætatem, & de aliis, fiat mentio sup essonium in margine q minor sit, & ad hoc q contra minorem jaceat essonium & in psonam minoris, distinguendum erit inter ætatē & ætatē, & ad hoc quòd locū habeat essonium, utrum tenementum sit feodū militare vel socagiū: secundum q inveniri poterit de itinere M. de P. in cōm Suff. anno regis H. x., & de itinere ejusdē in comitatu Warw. anno regis H. v., ubi dicitur, q si quis habuerit quatuordecim annos, talis ætas sufficit quantū ad socagium petēdum, & ita admittitur essonium tam contra ipsum quā pro eo, & q essoñ non jaceat in psona minoris contra minorem in causa possessionis, inveniri poterit in itinere¹ in comitatu Salop., assisa mortis, si Vincētius. Ratio autem est quare in persona minoris non jaceat essoñ, quia jurare non potest nec essonium warrantizare. Item ratio quare in persona majoris non jaceat essonium cōtra minorem, quamvis major jurare possit in causa possessionis, est, quia si major præsens esset in assisa capienda, nihil dicere posset cōtra assisam quare remaneret. Sed quid si minor & infra ætatem conveniatur & implacitetur cum uxore sua de jure & hereditate uxoris suæ, quæritur an propter ætatem minoris debeat placitum remanere? & verum est quòd non,

¹ "itinere," after this word there is a blank space in MS. Rawl. C. 160.

male as well as female, provided he is of full age. But a minor will not be able to essoin himself concerning whom it is ascertained that he is a minor, nor is an essoin admissable against him on the part of a major and chiefly in an assise, because when a major is present he can say nothing against the assise why it should be stayed, and if by chance it should happen that a minor has essoined himself, when he is engaged as a tenant in a trial, in things in which he may be bound to answer when under age, where he has been enfeoffed when under age, and concerning other things, let mention be made upon the essoin in the margin that he is a minor, and upon this that an essoin lies against a minor and against the person of the minor, a distinction will have to be made between age and age, and upon this that an essoin has place, whether the tenement be a military fee or a socage, according to what may be found in the Iter of Martin de Pateshull in the county of Suffolk in the tenth year of king Henry, and in the Iter of the same in the county of Warwick in the fifth year of king Henry, where it is said, that, if a person has fourteen years, such an age suffices as regards claiming a socage tenement, and so an essoin is admitted as well against himself as on his behalf; and that an essoin does not lie in the person of a minor against a minor in a cause of possession may be found in an iter in the county of Salop, an assise of mortdancer, if Vincentius. But the reason, why an essoin does not lie in the person of a minor, is because he cannot swear nor warrant an essoin. Likewise a reason wherefore an essoin does not lie in the person of a major against a minor, although a major may swear in a cause of possession, is, because if a major were present in the holding of an assise, he could say nothing against the assise wherefore it should be stayed. But what if a minor under age he convened and impleaded with his wife concerning the right and inheritance of his wife, it is asked whether on account of the age of the minor the plea ought to be stayed? and it is true that it ought not,

licet uxor sine viro respondere non debeat. Et quid si in curia domini regis implicitati fuerint de uno & eodem tenemento, & eodem die ubi vir minor se esso- niare non possit nec attornatum facere, videtur quòd amittere debent¹ in minori curia per defaultam, quod esset iniquum, cùm nihil sit quod eis debet aut possit imputari. Nullum autem aliud supererit remedium, nisi quòd major curia warrantizet contra processum minoris curiæ, & quid si ambæ curiæ pares extiterint? Item non jacet essonium in persona disseysitoris, quia licet ipse non venerit, ballivus venire poterit. Item nec in persona ballivi per se, quia dominus venire poterit per se sine ballivo, cùm uterque illorum at- tachiatu sit sub disjunctione: & non sufficit si unus se essoniaverit, nisi uterque fuerit essoniatus, quamvis f. 341. sufficiat quòd unus eorum veniat. Revera non jacet essonium in odium spoliationis, quia denegari debet eis dilatio xv. dierum et sumonitio rationabilis, et ideo maximè, quia tantum operatur eorum præsentia quan- tum absentia, quia sive venerit sive non, ppter hoc non remanebit assisa. In persona tamen spoliati & querentis bene jacebit essonium. Item non jacet esso- nium in psona ejus qui cõmissus est aliquibus p bal- livū, ut respõdeat² pro eo, sicut corpus pro corpore. Itē non jacet in psona ejus de quo præceptū est vic. q faciat eum venire vel q habeat corpus ejus, dum tamē pcesserit solennitas attachiamen- torū, quamvis sine essonio. Si autem hic fuerit primus dies attachia- menti, sequetur essoniū, quia ad quamlibet sumonitio- nem vel attachiamentum cùm de quocunq, placito de jure sequi debet essoniū. Sed ubi nullū placitum, ibi

¹ "debeant," MS. Rawl. C. 160. | ² "respondeant," MS. id.

although the wife ought not to answer without her husband. And what if they have been impleaded in the court of the lord the king concerning one and the same tenement and on the same day, when the male minor could not essoin himself nor make an attorney, it seems that they ought to lose in the minor court by default, which would be inequitable, since there is nothing which could or ought to be imputed to them. But no other remedy would remain over, except that the major court should warrant against the process of the minor court, and what if both courts should be equal? Likewise an essoin does not lie in the person of the disseysor, because although he has not come, his bailiff might come. Likewise not in the person of the bailiff by himself, because the lord may come by himself without his bailiff, when each of them has been attached disjunctively; and it is not sufficient if one has essoined himself, unless each has been essoined, although it would be sufficient that one of them should come. In truth an essoin does not lie in hatred of the spoliation, because there ought to be denied to them a delay of fifteen days and a reasonable summons, and therefore chiefly because their presence operates as much as their absence, because whether they have come or not, the assise shall not be stayed on that account. An essoin however will fitly lie in the person of the party spoiled and complaining. Likewise an essoin does not lie in the person of him, who has been committed by the bailiff to the charge of any persons that they should answer for him, like as body for body. Likewise it does not lie in the person of him concerning whom it has been enjoined to the viscount, that he should make him come, or that he should present his body, provided however the solemnity of an attachment has preceded, although without an essoin. But if this has been the first day of an attachment, an essoin will follow, because an essoin ought to follow of right upon every summons or attachment with every plea whatsoever. But where

f. 341.

nullum essonium. Ut si quis p̄ceperit ballivo suo vel mādaverit q̄ sit ad certū diem redditurus de balliva sua ratociniū, ut si rex p̄cipiat vicecoñ vel majori q̄ rationē reddant et cōpotum de balliva sua. Si autē vicecoñ vel major summoniti sint ad respondendū quo warranto vel quo jure ballivam suam tenuerit, aliud erit: quia ibi erit placitum.. Item non jacet essoniū in psona ejus qui attornatum fecerit, nisi ambo se forte essoniaverint. Itē non jacet in psona ejus qui se semel essoniaverit, donec cōparuerit. Item non jacet in psonis appellatorum de forcia nec in appello de pace, plagis & roberia, ubi illud dicendū est quòd domi remaneant, donec illi de facto convincantur. Sed si

Britton, vi.
ch. ix.
Fleta, 384,
385.

non venerint, p̄ essonium excusantur. Item non jacet ubi aliqua partium se essoniaverit, ignorans q̄ adversarius suus mortuus sit vel aliquis ex participibus suis. Itē non jacet ubi placitū ipso jure sit nullum, scilicet ubi breve non convenit petitioni & hujusmodi. Item non jacet in actione personali, postquam quis attachiatus fuerit, scilicet ubi primò se essoniaverit. Item ubi p̄ceptum est vicecomiti q̄ distringat per terras & catalla. Item non jacet ubi dies datus est, ut de die in diem, vel si datus fuerit dies sine essonio de consensu partium, quia conventio vincit legem in hoc casu: ut de termino S. Michaelis anno regni regis Henrici decimosexto incipiente decimoseptimo, in comitatu Essex, de Ethone filio Wilhelmi, cui non fuit essonium allocatum, quia dies datus fuit sine essonio quamvis diffusus ppter consensum, quod aliàs non esset. Nec etiam ipse dominus rex potestatem haberet dandi diem sine essonio, nec alius multo fortiùs, cū hoc

there is no plea, there is no essoin. As if a person shall have enjoined upon his bailiff or shall have ordered him that he should render on a certain day an account of his bailivry, as if the king shall have enjoined upon a viscount or a mayor that he should return an account and reckoning of his bailivry. But if the viscount or the mayor have been summoned to answer by what warrant or by what right he holds his bailivry, it will be another thing, because there a suit will be. Likewise an essoin does not lie in the person of him who has constituted an attorney, unless both have by chance essoined themselves. Likewise it does not lie in the person of him who has once essoined himself, until he has appeared. Likewise it does not lie in the persons of those who are accused of forcible assault nor on a charge of breaking the peace, or of blows and robbery, where it is to be said that they should remain at home, until they are convicted of the fact. But if they have not come they are excused through an essoin. Likewise it does not lie, where any of the parties has essoined himself, being ignorant that his adversary has died or some of his associates. Likewise it does not lie, where the plea is null in law, for instance where the writ does not agree with the petition and such like. Likewise it does not lie in a personal action, after that a person has been attached, to wit, where he has at first essoined himself. Likewise where the viscount has been enjoined to distrain upon the lands and the chattels. Likewise it does not lie where a day has been given, as from day to day, or if a day has been given without an essoin by the consent of parties, because a convention overcomes the law in this case, as in St. Michael's term in the sixteenth and seventeenth years of the reign of king Henry in the county of Essex, concerning Etho the son of William, to whom an essoin was not allowed, because a day was given to him without an essoin, although diffuse, on account of consent, which otherwise would not have been. Nor would even the lord the king himself have power to fix a day without an essoin, and another person still less so since he can-

facere non possit sine juris injuria sine cōsensu partium, quia ex quo hoc voluit, juris beneficium ei non subvenit cōtra voluntatem suam, quia sic invito conferetur beneficium &c. Item non jacet, si ille qui se essoniat visus fuit in curia antequam reddatur essonium. Item non jacet post defaultam postquam terra capta fuerit in manum domini regis. Item non jacet, ubi ex virtute mandati non imponitur vocato necessitas veniēdi nisi ad voluntatē suam, ut si dicatur q veniat si sibi viderit expedire. Itē non jacet ex virtute mādati, s. ad volūtātē mādantis. Et dicat in curia q velit placitare. Item non jacet si mandetur vel p̄cipiatur vic. vel ballivo, majori, vel p̄posito villæ, vel burgi, vel civitatis, q veniat redditurus compotum, vel
 f. 341 b. responsurus de tempore suo, quia ibi nullum placitum nec aliqua controversia: Item quis?¹ Et sciendum q tam plures tenentes quā unus, & tunc refert utrum plures tenentes in uno brevi tenuerint in cōmuni simul & p̄ indiviso, vel separatim & p̄ diviso, partita inter coheredes hæreditate. Si autem simul & p̄ indiviso, quilibet eorū unicum habebit essonium (si voluerit) de malo veniendi simul & eodem die, vel vicissim & diversis diebus, secundum q elegerint, donec quilibet eorum unicum habeat essonium (nisi aliud sit de consuetudine), quia plura non habebunt antequam simul comparuerint, licet illi qui primò fuerint essoniati sæpius cōpareant, quia semp diem habebunt quousq, omnes

¹ "Item quis?" omitted MS. Rawl. C. 160.

not do this without injury to right without the consent of parties, because from the time he has wished it, the benefit of the law does not succour him against his will, because a benefit, &c. would be so conferred upon a person unwilling to receive it. Likewise an essoin does not lie, if the person who essoins himself has been seen in the court before his essoin was returned. Likewise it does not lie after a default after that the land has been seized into the hand of the lord the king. Likewise it does not lie, when in virtue of a mandate the necessity of coming is not imposed upon the person called except with his own will, as if it be said that he should come if it seems to him expedient. Likewise it does not lie in virtue of a mandate, that is at the will of the mandator. And let him say in court that he wishes to plead. Likewise it does not lie, if it has been commanded or enjoined to a viscount or a mayor, or a provost of a township, or of a borough, or of a city, that he should come in order to render his account, or in order to answer concerning his time, because where there is no plea, there is no controversy. Likewise who may essoin himself? f. 341 b. And it is to be known that as well several tenants as one tenant, and then it matters whether several tenants in one writ have held in common together and in an undivided whole, or separately and in divided parts, the inheritance having been parted amongst the co-heirs. But if together and in an undivided whole, each of them shall have a single essoin, if he pleases, for sickness in coming together and on the same day, or in turns and on different days, according as they shall have chosen, until each of them has had a single essoin (unless it be otherwise from custom), for they shall not have more essoins until they have appeared together, although those, who have been essoined the first, shall have frequently appeared, for they shall always have a day assigned to them until they have all appeared together, because an essoin does not follow

simul cōparuerint, quia ad omnem apparitionem non sequitur essonium, q si ita esset, ita fierent dilationes innumerabiles. Si autem antequam cōpareant unus moriatur ex pluribus tenentibus in communi, cadit breve, licet videatur cōtrarium, cū pars sua accrescat superstitibus per jus accrescendi, qui revera die imprecationis partē illam non tenuerunt, nec quantū ad tenēdam partē illam in communi subfuit causa impetrandi. Si autē inter plures partita sit hæreditas, & unus tantum de parte sua implacitatus fuerit, unicū habebit essonium antequā comparuerit si voluerit, & in persona sua quantum ad ptem illam terminabitur negotium, nisi ita sit q sic respondeat, q sine participibus suis non debeat respōdere, & quo casu summonendi sunt participes quōd sint ad respondendū cum eo & sine quibus &c. Et etiam quo casu quilibet ex participibus (qui dicuntur participes) unicum habebit essonium ante apparitionē, sed non quasi unus hæres & particeps, & vicissim, donec constiterit eos esse participes. Et cū p̄sentes sint omnes & dedicere non possunt cū sint participes, extunc erunt quasi unus hæres. Divisio enim hæreditatis facit unitatē juris esse plures, & per hoc hæredes esse plures; defensio enim omnium revocat unitatem juris, & sic iterum facit cōmunes defensio plures personas quasi unum corpus & unum hæredem ppter juris unionem, quia si tenens amiserit, omnes tenentur contribuere. Si autem plures sint tenentes in codē brevi, sed tamen diverso jure & non ut participes, quilibet habebit essonium p se & non vicissim ut supra, quia hic sunt diversa placita & ibi tantum unum & non plura. Si autē sint ibi plures tenentes sicut vir & uxor, licet non teneant in communi ut supra dictum est, tamen quilibet eorū

¹ "in casu vero," MS. Rawl. C. 160.

upon each appearance, because if it were so, the delays would thus be innumerable. But if before they appear, one of several tenants in common dies, the writ falls, although the contrary would seem, since his share accrues to the survivors by the right of accretion, because in truth on the day of suing out the writ they did not hold that part, nor was there as regards their holding that part in common any ground for suing out a writ. But if the inheritance be parted amongst several, and one only has been impleaded concerning his share, he shall have a single essoin before he has appeared, if he chooses, and in his person as far as regards that part the business will be terminated, unless it should happen that he thus answers, that without his coparceners he ought not to answer, and in which case the coparceners are to be summoned that they be present in order to make answer together with him and without whom &c. And also in which case each of the coparceners (who are called coparceners) shall have a single essoin before his appearance, but not as if one heir and coparcener, and in turns, until it has been established that they are coparceners; and when they are all present and cannot gainsay that they are coparceners, thenceforth they will be as it were one heir. For the division of the inheritance makes the unity of right to be in several persons, and accordingly the heirs to be several in number, for the defence of all recalls the unity of right, and so the common defence makes again several persons to be one body and one heir on account of the union of right, for if the tenant has lost, all are bound to contribute. But if there are several tenants in the same writ, but nevertheless with a diverse right and not as coparceners, each will have an essoin by himself, and not in turns as above, because here there are divers pleas, and there only one and not several. But if there be there several tenants, as for instance a husband and a wife, although they do not hold in common as above said, nevertheless each of them shall have a single

unicum habebit-essonium simul vel vicissim, tum ppter
 unitatē juris tum ppter unitatem sanguinis, cū sint
 una caro vir & uxor, q non est in casu supradicto, &
 unde si unus illorum defaultam fecerit, ambo puniūtur
 p defaulta unius. In hoc casu vero¹ supradicto nō nisi
 ille qui defaultā fecerit, quia in casu supradicto picipū
 jus cōmune recipit divisionē, jus autē viri & uxoris
 &¹ de re uxoria nullā recipit divisionē, & maximē
 cū res sit ppria uxoris & non viri, cū ad virū non
 pteat nisi tantū custodia ratione uxoris. Plures vero
 tenentes (licet teneāt in cōmuni) quilibet suum habe-
 bit essoniatōrē, quia diversae sunt psonae & diversae
 excusationes. Cū autē omnes participes vel tenentes
 simul in curia comparuerint, & contingat q tenens
 unus vel plures vel unus ex pluribus se essoniaverit,
 vel dies datus fuerit partibus si p̄sentes fuerint, sicut
 dies amoris sub specie pacis, vel post visum petitem,
 vel warrantum vocatū, vel p defectu recognitorū, vel
 alia quacunque ratione, poterunt tenentes essonia sua
 reincipere sicut primo die sūmonitionis. Si autē plu-
 res sint tenentes, qui tenuerint pro diviso quilibet
 ptem suā, & implacitati fuerint ab uno vel diversis
 personis in cōmuni, quilibet habebit unicū essonium &
 p se, donec omnes simul comparuerint, & non vicissim.
 Si autem unus defaultā fecerit, hoc erit sibi soli dam-
 nosum & non participibus, si amiserit, & nec versus
 participes regressum habebit, sed sibi ipsi negligentiam
 ppriam imputare poterit. Cū autē omnes præsentes
 fuerint, tunc pcedat negotium quasi in communi, quia
 nullus sine alio respondebit, sive plures fuerint peten-
 tes in communi vel diverso jure, quia bene contingit

f 342.

¹ "et" omitted MS. Rawl. C. 160.

essoins together or in turn, as well on account of the unity of right as of the unity of blood, since man and wife are one flesh, which is not in the case above said, and hence if one of them has made default, both are punished for the default of one. But in this case above said only he who has made default is punished, because in the case abovesaid the common right of the coparceners admits of division, but the right of the husband and wife respecting an estate of the wife's admits of no division, and chiefly when the estate is the proper estate of the wife and not of the husband, since there only belongs to the husband the custody of the estate in regard of his wife. But if the tenants are more than one (although they hold in common), each shall have his own essoiner, because the persons are divers and the excuses are divers. But when all the parceners or tenants shall have appeared together in court, and it happens that one tenant or several, or one out of several, has essoined himself, or if a day has been given to the parties, as a day of *f. 342*. love under the form of peace, or after a view has been claimed, or after a warrantor has been called, or on account of default of recognisors, or for any other reason whatsoever, the tenants may recommence their essoins, as on the first day of the summons. But if there be several tenants, who have held each his own part as divided from the others, and they have been impleaded in common by one or by different persons, each shall have a single essoin and by himself, until all have appeared together, and not in turns. But if one has made default, this shall be damaging to himself alone and not to his parceners, if he has lost, and he shall have no recourse against his parceners, but he may impute to himself his own negligence. But when all shall have been present, then let the business proceed as it were in common, because none shall answer without the other, whether there be more than one claiming in common, or by a different right, because it well happens, that some out of several may be able to retain, whether an in-

q̄ quidam ex pluribus poterunt retinere, sive ab uno vel pluribus petatur hæreditas, cōmūnis à cohæredibus sed divisa, si tamen ab uno jure vel pluribus petatur in communi, simile erit judicium tenentium singulorum, sive pro, sive contra: nisi sit aliquis qui partem suam amittat per negligentiam & defaultam, & quo casu versus participes regressum non habebit. Et unde si unus ex pluribus participibus vel pluribus tenentibus in communi primo die comparuerit, vel pro diviso, sine participibus suis non respōdebit nisi velit, hoc tamen allegato q̄ participes habeat.

8.
Si plures
sunt peten-
tes.

Si autē plures sint ibi petētes, sive tenēs sit unus vel plures, observabitur in essonio secundū q̄ observandū erit in pluribus tenentibus, scilicet quòd omnes habeant unicum essonium simul & uno die vel vicissim & successivè, quia in hoc nō licebit reo quod actori non liceat, q̄ quidem non contingit nisi ex magna causa, cūm petens potius desiderare debeat instantiam litis quàm dilationem. Et si forte ex pluribus unus se essoniaverit, ex hoc omnibus aliis proveniet impedimentum & dilatio. Si autem unus ex pluribus defaultam fecerit, expectato quarto die, recedet tenens de brevi quietus ac si omnes defaultam fecissent, & sic erit unius negligentia omnibus aliis damnosa, quia aut omnes sequantur aut nullus. Idem verò dicendum erit de viro & uxore petentibus, quòd absentia viri erit damnosa uxori & e contrariò, sive autem plures sunt qui teneant sive qui petant, si quidam ex illis præsentes fuerint & quidam se essoniaverint & diem habuerint, illi qui p̄sentes erunt semper habebunt eundem diem,

heritance be claimed from one or from several, a common inheritance from coheirs but divided, if however it be claimed by one right or by several in common, the judgment of the individual tenants will be alike, whether for or against, unless there should be some one who loses his part through negligence and default, and in which case he shall have no recourse against his parceners. And hence if one out of several parceners or out of several tenants in common has appeared on the first day, or for his divided share, he shall not answer without his parceners unless he wishes, provided however it has been alleged that he has parceners.

But if there be several persons there claiming, whether the tenant be one or more, there shall be observed in the essoin the same as ought to be observed in the case of several tenants, to wit, that all shall have a single essoin together and on one day, or in turns and successively, because in this there shall not be allowed to the defendant what is not allowed to the plaintiff, which indeed does not happen except from a great cause, when the claimant ought rather to desire the urgency of the suit than the delay of it. And if by chance one out of several persons shall have essoined himself, there will result to all the others therefrom an impediment and a delay. But if one out of several has made default, after the fourth day has been awaited, let the tenant go away quit of the writ as if all had made default, and thus the negligence of one will be damaging to all the others, because either all would follow or none. But the same thing will have to be said concerning a man and his wife who are plaintiffs, that the absence of the man will be damaging to the wife and the converse, whether there be several persons who hold, or who claim, if some of them have been present and some have essoined themselves and had a day, those who shall be present shall always have the same day, lest the continuity of the trial should be divided, and let there be always added in the essoin for caution's sake, who has essoined himself to

8.
If there be
several
claimants.

ne continentia loquelæ dividatur: & semper addatur in essonio ad cautelam quis se essoniaverit ad unum diem vel ad alium, ut scire possunt in fine utrum omnia essonia sua habuerint vel non. Et hæc vera sint, nisi consuetudo aliqua se habeat in contrarium, cùm consuetudo vicem legis obtineat, longævi enim temporis usus & consuetudinis non est vilis autoritas.

9. Si tenens fecerit attornatum. Esto quòd tenens in propria persona sua sequi non possit, vel licet possit vel pro dubio eventu facit attornatum ad cautelam, quo casu in persona attornati jacet essonium & non in persona domini, sive petens qui attornatum fecerit sive tenens: quia attornatus fere in omnibus personam domini representat. Fere dico, propter essonium de malo lecti, ut inferius dicitur. Et quamvis quis attornatum fecerit, in psona ppria sequi poterit cùm voluerit vel possit. Item q hoc volūtati ejus tribuatur, sed semper durat attornatus quousque domin⁹ eum amoverit, et quamdiu duraverit attornatus, nūquam locum habebit essonium in persona dñi, nisi cùm ambo se essoniaverint ad similitudinem duorum attornatorum vel plurium, quia si dominus venire non possit per se, possit venire per attornatum suum, sed non e contrariò, quia non est in duobus attornandum. Sed quid si dominus cùm fecerit attornatum & illum non amoverit ad aliqm diem sine attornato egerit vel respondit,¹ & diem ceperit in persona sua, quæro quis ad alium diem debeat se essoniare, dominus vel attornatus? Videtur q attornatus non, quia p̄sens non fuit in judicio nec diem receperit; dominus non, quia fecit attornatum & illum non amovit. Tutius est q ambo se essoniaverint, licet sufficiat quòd attornatus se essoniat quantum ad ex-

Britton, vi.
ch. x. § 4.

¹ "responderit," MS. Rawl. C. 160.

one day or to another, that they may know in the end whether they have had all their essoins or not. And these things are true, unless there be some custom to the contrary, since custom plays the part of law, for the authority of an usage and custom of ancient time is not slight.

Let it be, that the tenant cannot sue in his own person, or although he may be able, yet for a doubtful event he constitutes an attorney for caution's sake, in which case an essoin lies in the person of the attorney, and not in the person of the principal, whether it be the claimant or the tenant who has constituted an attorney, because an attorney represents the person of the principal almost in all matters. I say almost, on account of an essoin for bed-sickness, as will be explained below. ^{9.} If the tenant has constituted an attorney. f. 342 b.

And although a person has constituted an attorney, he may sue in his own person, when he wishes, or is able. Likewise that this is allowable to his wish, but the attorney always continues, until the principal has removed him, and as long as the attorney continues, the essoin will never have place in the person of the principal, except when both have essoined themselves after the likeness of two or more attorneys, for if the principal cannot come in person, he may come by his attorney, but not contrariwise, for an attorney cannot be constituted in the two cases. But what if the principal, when he has constituted an attorney, and has not removed him, should on a certain day have acted without his attorney and should have answered, and have taken a day in his own person, I ask who ought to essoin himself on the other day, the principal or the attorney? It seems that the attorney should not, because he was not present at the judgment, nor did he take the day; the principal should not, because he has constituted an attorney, and has not removed him. It is safer that both should essoin themselves, although it would be sufficient that the attorney should essoin himself as regards making an excuse, since the principal has not

cusationem, cùm dominus eum non amoverit. Si autem dominus p se, non valebit quamdiu habuerit attornatum. Et q dicitur de attornato tenentis, dici debet de attornato petentis. Item esto q petens vel tenens plures fecerit attornatos, duos scilicet vel plures, unus ex pluribus (si p̄sens fuerit in iudicio) agere poterit pro domino suo vel defendere sine aliis. Excusare autem absentiam suam non valeat sine aliis, quin procedatur ad defaultam ac si omnes defaultam fecissent. Et est ratio, quia si per unum attornatum non possit dominus litis comparere, per alium poterit: et sic oportet quòd omnes excusentur vel nullus. Constituti enim sunt attornati sub disjunctione, ita quòd si unus non venerit vel venire non possit, quòd alius veniat, nisi uterque se legitimè excusaverit. Et si unus attornatus se essoniaret et alius non, si petens diem reciperet versus essoniatores attornati & recederet, posset alius attornatus cōparere & liti se offerre, & ponere petentem vel tenentem in defaultā, q esset iniquum. De hac materia inveniri poterit de termino S. Michaelis anno regni regis Henrici decimosexto incipiente decimoseptimo de I. Bathoñ episcopo & priore Bathoñ. Ad idem facit de termino Hilarii anno ejusdem decimosexto de Johanne de Karum. Item esto q quis duos fecerit attornatos versus unum querentē vel tenentem vel plures, et uterque se essoniaverit, et tenens forte vel querens defaultam fecerit: quæritur an unus essoniator attornati vel ambo expectare debeant quartum diem: Videtur q oportet quòd ambo expectent, quia non videtur quòd sufficiat quòd unus expectaverit non magis quàm si unus excusaret. Videtur etiam q sufficit si unus expectet, quia quoad essonium et

Britton, *ib.*

removed him. But if the principal has done so personally, it shall not avail, as long as he has an attorney. And what is said of the attorney of the tenant, ought to be said of the attorney of the claimant. Likewise let it be that the claimant or the tenant has appointed several attorneys, two, for instance, or more, one out of several (if he has been present at the judgment) may act for his principal or defend him without the others. But he may not avail to excuse his absence without the others, because proceedings will be had for a default as if all had made default. And the reason is, because if the principal in the suit cannot appear by one attorney, he will be able to appear by another, and so it is incumbent that all should be excused or none. For attorneys are appointed disjunctively, so that if one has not come or cannot come, the other may come, unless both have excused themselves lawfully. And if one has essoined himself and the other not, if the claimant should obtain a day against the essoiner of the attorney and should go away, the other attorney might appear and offer to contest the suit, and put the claimant or the defendant into default, which would be inequitable. On this subject a case may be found in St. Michael's term in the sixteenth and seventeenth years of the reign of king Henry, concerning John bishop of Bath and the prior of Bath. A case also bears on the same subject in Hilary term in the sixteenth year of the same king, concerning John de Karum. Likewise let it be, that a person has constituted two attorneys against one claimant or tenant or several, and both have essoined themselves, and the tenant by chance or the claimant has made default, it is asked whether one essoiner of an attorney or both ought to await the fourth day. It seems that both ought to await it, because it does not seem that it would suffice for one only to await it any more than for one only to excuse himself. It seems also that it is sufficient if one should await the fourth day, for as far as regards an

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excusationem utitur vice essoniatoris sive excusatoris, & quoad expectandum quartum diem utitur vice quasi actoris. Et ideo videtur quòd sufficiat unus: sed re vera quòd cùm infra quartum diem posset venire tenens nec prius reddi debeat essoniū quàm ante quartū diem, ideo oportet q̄ uterq̄ expectet, quia non sufficit unus, quia si unus tantum se essoniaverit, non valet nisi unus essoniator diem suum expectaverit. Itē esto q̄ cùm attornatus factus fuerit, ante diem datum in curia moriatur, & dominus principalis ad diē datū se essoniaverit nulla facta mentione de morte attornati,

f. 343. & justic. ignorantes de morte attornati judicaverint essonium nullū, quia talis fecit attornatum, & sic pcesserit¹ ad defaltā, si dominus postea ad diem suum venerit excusando absentiam alterius diei & allegādo causas absentiae de morte attornati, non excusabitur quod quidem esse posset si simul cum essonio suo faciet essoniari attornatum de morte, unde videri poterit q̄ non aliter jaceret essonium in persona domini, cùm attornatū fecerit, nisi tunc demū cùm attornatū amoverit, vel cōstiterit q̄ mortuus sit. Item esto quòd cùm quis fecerit attornatum, ad primum diem sumōnitionis se essoniaverit, & attornatus secundo die vel tertio, essonium domini nullum erit, quia fecit attornatum, & de defalta attornati pcedendum erit ad diem datum p̄ essoniatores, si petens se tenuerit ad defaltam, quia essonium dñi non defendit primum diem cū sit nullum &c.

¹ "processerint," MS. Rowl. C. 160.

essoins and an excuse he fills the part of an essoiner or excuser, and as far as regards awaiting the fourth day he fills the part as it were of a plaintiff, and therefore it seems that one would suffice, but in truth since the tenant might come before the fourth day, and the essoin ought not to be rendered before the fourth day ; therefore it is incumbent that both should await the fourth day, because one does not suffice, because if one only has essoined himself, it does not avail, unless the one essoiner has awaited his day. Likewise let it be that, when an attorney has been constituted, he should die before the day assigned in court, and the party principal on the day assigned has essoined himself without any mention having been made of the death of his attorney, and the justiciaries being ignorant of the death of the attorney, have judged the essoin to be null, because the said party has appointed an attorney, and so have proceeded to a default, if the principal shall afterwards come upon his own day, in excusing his absence on the other day, and in alleging the causes of the absence from the death of his attorney, he shall not be excused, which might indeed be, if together with his own essoin he should cause his attorney to be essoined for death, whence it may be seen that an essoin in the person of the principal would not otherwise lie, when he has constituted an attorney, except at such time when he has removed the attorney, or it has been established that he is dead. Likewise let it be that, when a person has constituted an attorney, on the first day of the summons he has essoined himself, and the attorney on the second or third day, the essoin of the principal will be null, because he has constituted an attorney, and upon the default of the attorney proceedings will be had on the day assigned through the essoiner, if the claimant has kept himself to the default, for the essoin of the principal does not defend the first day, since it is null, &c.

f. 343.

10. Quidam sumōnitione p̄ventus cūm vellet peregre
 Si attornatus obierit, dum dominus principalis litis fuerit in peregrinatione.
 pficisci versus Terram Sanctā in passagio generali, duos fecerit¹ attornatos vel plures, & dum ita esset in peregrinatione moriuntur attornati, ad diem offert se petens liti, nec tenens venit nec attornatum habet, quæritur quid juris cūm nihil sit quod possit tenenti imputari? Consilium curiæ erit, q̄ attornati essoniarentur de morte, & sic remanebit loquela sine die usque ad reditū domini principalis. Casus de Petro de Roches quondam Wintoñ episcopo, qui profectus fuit in Terram Sanctam in generali passagio. Et quod dictum est de tali peregrinatione, observari debet in aliis peregrinationibus, sicut apud Sanctum Jacobum vel alibi. Item esto q̄ quis se vel attornatum suum falsò essoniaverit de morte cūm vivus sit, si postea de eo constiterit quòd sit vivus, resumoneatur loquela in eodem statu in quo fuit die essonii interpositi per hæc verba, ita q̄ loquela illa tunc sit ibi in eodem statu quo fuit quando remansit sine die, eo quòd p̄dictus talis se essoniaverit falsò de morte, qui adhuc vivit ut dicitur. Et in quo casu, nisi sanare possit defaultam, amittet p̄ judicium: ut de termino S. Michaelis anno regni regis Henrici decimoquinto incipiente decimosexto in cōm Can̄ de quodam Osberto.

11. Item, esto q̄ quis vocet ad warrantum unum vel
 Si tenens plures vocaverit warrantes vel unum.
 plures warrantos, post warranti vocationē habebit quilibet unicū essonium antequā cōparuerint, tam vocans quàm warrantus. Si autē plures warranti vocati fuerint ab uno, quilibet eorū unicum habebit essonium eodem modo, primo die simul vel vicissim, secundum q̄ superius dicitur, de pluribus tenentibus, scilicet quilibet post alium donec habuerint omnia essonia sua, scilicet quilibet unū. Et si plures sint tenentes & plures warranti eodem modo, et ita q̄ si unus ex plu-

¹ "fecit," MS. Rawl. C. 160.

A certain person overtaken by a summons, when he was desirous to go abroad towards the Holy Land on a general passage, appointed two or more attorneys, and whilst he was so on his pilgrimage, the attorneys died, on the day assigned the claimant presents himself for the suit, and the tenant neither comes himself nor sends an attorney, it is asked, what is the law, since there is no fault to be imputed to the tenant? The resolution of the court will be that the attorneys are essoined on account of their death, and so the trial will be stayed until the return of the principal party in the suit. The case of Peter de Roches, formerly bishop of Winchester, who set out for the Holy Land on a general passage. And what has been said concerning such a pilgrimage, ought to be observed in other pilgrimages, as to St. James and elsewhere. Likewise let it be, that a person has falsely essoined himself or his attorney on account of death when he is alive, if it be afterwards established that he is alive, let the trial be resummoned in the same state in which it was when it was stayed without a day, on the ground that so-and-so aforesaid has falsely essoined himself on account of death, who is still alive, as it is said. And in which case unless he can cure his default, he shall lose by the judgment, as in St. Michael's term in the fifteenth and sixteenth years of the reign of king Henry, in the county of Kent, concerning a certain Osbert.

Likewise let it be that some one calls to warrant one or more warrantors, after the calling of a warrantor each shall have a single essoin before they have appeared, as well the caller as the warrantor. But if several warrantors have been called by one, each of them shall have a single essoin in the same manner on the first day together or in turns, according to what is said above, concerning several tenants, to wit, each after the other until they have had all their essoins, to wit, each of them one essoin. And if there be several tenants and several warrantors in the same manner, and so that if one out

10.
If an attorney has died whilst his principal in the suit has been on a pilgrimage.

11.
If a tenant has called several warrantors, or a single one.

ribus tenentibus vel unus ex pluribus warrantis se essoniaverit primo die & omnes alii p̄sentes sint, habebunt eundem diem quem habet essoniator & ita de die in diem poterit se unus essoniare & postea alius, donec quilibet unicum habuerit essonium. Et eodem modo cū omnes semel & simul in iudicio cōparuerint & alium diem simul receperint, poterunt reincipere essonia sua sicut primo die. Si autē quidam se essoniaverint & quidā p̄sentes fuerint & quidam fecerint defaultam, de essoniatis & p̄sēntibus fiat ut supradictum est. De absentibus verō fiat ita, scilicet q̄ petens vel attornatus suus vel essoniator suus si fuerit essoniatus, expectet quartum diem versus eos, si vocati infra quartū diem nō venerint, & in quarto die si non venerint, p̄cedatur ad defaultā secundum q̄ inferius dicitur de defaultis. Item cū unus essoniatus fuerit versus plures, essoniator suus omnes dies recipiet versus omnes. Si autem plures versus unum, quilibet recipiet diē suū, nec poterit unus alterius diem recipere, non magis quā duos participes essoniare. Itē dicitur generaliter, q̄ si quis se essoniaverit versus unum, essoniat se versus omnes, & tunc refert utrum plures sint petentes & unus tenens unicam rem. Si autē plures petentes in cōmuni, sufficit si dicat essoniator tenentes¹ q̄ essoniat dominū suum versus talē & omnes alios nominatos in brevi sine expressione nominum aliorum. Si autem sic dicat, essonio dominum meum versus talem de tali placito sine mentione aliqua de aliis in brevi nominatis, videtur (& verum est) q̄ hoc sufficere debeat, quia p̄ hoc q̄ dominus essoniatur, nihil aliud

¹ "tenentis," MS. Rawl. C. 160.

of several tenants or one out of several warrantors has essoined himself on the first day, and all the others are present, they shall have the same day which the essoiner has, and so from day to day one may essoin himself and afterwards another, until each has had a single essoin. And in the same manner when all have appeared once and together in the court, and have together received another day, they will be able to recommence their essoins as on the first day. But if some have essoined themselves and some have been present, and some have made default, let it be done with those who have been essoined and with those who are present as above said. But concerning the absent, let it be done thus: f. 343 b. to wit, that the claimant or his attorney, or his essoiner if he has been essoined, should await the fourth day in regard to them, if having been called they have not come within the fourth day, and on the fourth day if they have not come, let proceedings be had for a default according to what will be said below concerning defaults. Likewise when one has been essoined in reference to several, his essoiner shall receive all the days with regard to all. But if several have been essoined in reference to one, each shall receive his own day, nor shall one be able to receive the day of another, no more than to essoin two parceners. Likewise it is said generally, that if any one has essoined himself with reference to one person, he essoins himself with reference to all, and then it is of importance whether there are several persons claiming and only one holding a single estate. But if there are several persons claiming in common, it is sufficient if the essoiner of the tenant says, that he essoins his principal with reference to so-and-so and all the others named in the writ without expressing the other names. But if he thus says, I essoin my principal with reference to so-and-so in respect of such a plea without mention of any others named in the writ, it seems (and it is true), that this ought to suffice, because by the fact that the principal party is essoined, nothing else is pretended,

ptenditur, nisi q dominus suus per infortunium vel per morbum aliquem supervenientem impedimentum habeat, quòd ad diem sibi datum venire non possit, & ita cùm in curia semel excusetur absentia ejus per essoniato-rem suum versus unum & probetur excusatio sua, sufficit versus omnes, quia si alii procedere vellent ad defaltam cōtra essoniatum, hoc facere non possent sine partecipe qui exprimitur, & ideo nulla defalta. Si autem è cōtrariò unus vel plures petentes contra plures tenentes, tunc refert utrum tenentes sint in communi ut participes, vel tenentes diversa tenementa per diversa jura. Si autem diversa teneant tenementa & per diversa jura, tunc oportet quòd petens (si unus sit) essoniat se versus omnes cum expressione personarum, quia sunt ibi diversa jura & diversa placita, licet plures tenentes in uno brevi cōprehendantur. Et si plures sint petentes in cōmuni & unus tenens sive plures, oportet quòd omnes petentes se excusent aut sequantur & veniant, sed defalta unius non erit omnibus aliis damnosa, nisi tantum illi qui defaltam fecit de parte sua. Si autem tenētes teneant in cōmuni vel pro indiviso,¹ dum tamen ut participes, si petens unus vel plures se essoniaverint, dum tamen omnes, sufficit si essoniati sint cōtra unum & alios in brevi nominatos, vel tātum cōtra unum sine mentione de aliis, ratione supradicta, quia cùm petentes excusati fuerint versus unum tenentem ex pluribus in cōmuni, alii sine eo pcedere non poterunt ad defaltam. Item si cui acciderit aliqua infirmitas in itinere veniendi & q impotens sit veniendi, eodem modo impotens esse poterit mittendi plures personas ad curiam ad excusandam suam absentiam, & ideo sufficit si uni-

¹ "pro diviso," MS. Rawl. C. 160.

except that his principal through misfortune or through some supervening illness meets with an impediment, so that he cannot come on the day assigned to him, and so when in the court his absence is once excused by his essoiner with reference to one person, and his excuse is approved, it suffices with reference to all, because if the others wished to proceed to a default against the party essoined, this they could not do without their co-parcener who has been expressly mentioned, and therefore there is no default. But if on the contrary there be one or several claimants against several tenants, then it is of importance whether they are tenants in common as parceners, or persons holding divers tenements on different grounds of right. But if they hold divers tenements and on different grounds of right, then it is incumbent that the claimant, if he be single, should essoin himself in reference to them all with an expression of their persons, because there are there different rights and different pleas, although several tenants are comprehended in one writ. And if there are several claimants in common and one tenant or more, it is incumbent that all the claimants should excuse themselves or should sue and come, but the default of one shall not be hurtful to them all, except only to him who has made default on his own part. But if the tenants hold in common or in entirety, provided they hold as parceners, if one claimant or more have essoined themselves, provided they are all, it suffices if they have been essoined against one and the others named in the writ, or only against one without mention of the others, for the reason above-mentioned, because when the claimants have been excused with reference to one tenant out of several in common, the others cannot proceed without him to a default. Likewise if there has happened to any one any illness on the way in coming, and so that he be unable to come, in the same manner he may be unable to send several persons to the court to excuse his absence, and accordingly it suffices if he sends a single person

cam psonam mittat cōtra plures qui sunt quasi unica psona, ppter unicū jus q habent. Item essonium nō fit parti sed curiæ (ut videtur), quia in absentia adversarii poterit quis se essoniare sicut in p̄sentia. Et eodem modo in absentia adversarii poterit fieri warrantizatio essonii & sacramentū, & unde videtur q sufficit si justic. cōstiterit de impotētia, etiā sine pte altera. Et ideo si impotens sit veniendi vel mittendi versus unum, impotens esse poterit mittendi versus plures, & non refert nisi quòd justiciariis cōstiterit de impotentia. Sed cōtra si plures sint petentes, oportet q tenens, unus vel plures, se essoniet versus quemlibet nominatim ita q distinguetur, quid, quis, cōtra quem & de quo placito, secundum q videri poterit in attornato faciendo, quis attornaverit, & quem, & versus quem, & de quo placito, quæ omnia si non exprimantur non valebit attornatio. Eodem modo (ut videtur) observari deberet de essonio, quia potest quis tenens esse essoniatus versus unum ex pluribus & in defalta versus alium, sed observandum erit ut supra, secundum q ibi fuerit unum placitum vel plura.

12. Item quis? Et sciendum q essoniari poterit tam
 Quis post
 duelli
 vadia-
 tionem se
 possit.
 es soniare.
 campio quàm dominus principalis post duelli vadiationem simul & uno & eodem die vel vicissim: ut de termino S. Michaelis anno regni regis Henrici nono incipiente decimo, in comitatu Can̄, de quodam recordo de abbate de Haynshā.

against several who are as it were a single person on account of the single right, which they have. Likewise the esoin is not made to the party but to the court (as it seems), because a person may esoin himself in the absence of his adversary just as in his presence. And in the same manner in the absence of his adversary the warranting of the esoin and the oath may be made, and hence it seems that it is sufficient if it is made out to the satisfaction of the justiciaries concerning the inability of the party to come, even without the presence of the other party. And accordingly if he be unable to come or to send with reference to one, he may be unable to send with reference to many, and it is not of importance except that the justiciaries should be satisfied as to his inability. But on the contrary if the claimants are several in number, it is incumbent that the tenant, one or several, should esoin himself with reference to each by name, so that it can be distinguished as to what, who, against whom and concerning what plea, according to what may be seen in making an attorney, who has attorned, and whom, and in regard to whom, and concerning what plea, which matters, if they be not all expressed, the attornment will not be valid. In the same manner (as it seems) it should be observed concerning an esoin, because a tenant may be essoined in regard to one out of several, and may be in default in regard to another, but it should be observed as above, according as there may be one suit or several. f. 344.

Likewise who? And it is to be known that as well 12.
 the champion as the principal party after the wager of Who may
 battle may be essoined together and on one and the esoin him-
 same day, or in turns, as in St. Michael's term in the self after
 ninth and tenth years of the reign of king Henry in the wager
 the county of Kent, in a certain record concerning the of battle.
 abbot of Haynsham.

13. *Quando quis possit essionari.* Item quando? Et sciendum q̄ primo die litis, quia non sufficit quòd in crastino, scilicet secundo die, tertio, vel quarto, licet expectari debeat ille qui sumonitus est usq̄ ad quartum diem, ut infra veniat vel mittat nuntium ad excusandum suam absentiam, licet suus essioniator diem non recipiat si forte essionium locum non habeat, secundū q̄ inferius dicetur de defaultis. Si autē essionium competat sumonito & faciat se essionari secundo die vel tertio, allocabitur essionium, & dabitur dies essioniato per essioniatorem suum, & ad diem illum allocabitur petēti defaulta si se tenere voluerit ad defaultam, & quo casu, si tenens se excusare non possit ad diem illum, amittere poterit seysina m.

14. *Ubi possit essionari.* Et ubi? Et sciendum q̄ in iudicio corā suo iudice & non alio, licet corā eo qui habeat jurisdictionem cum aliis justiciariis, cū suus non habet jurisdictionem nec cohertionem. Si autē corā alio per errorem se fecerit essionari, adhuc valebit essionium, de gratia tamen, q̄ salvabitur defaulta quousq̄ iudicium reddatur de defaulta, ulterius autem vix poterit excusari.

15. *Quotiens possit essionari.* Item quotiens? Et sciendum q̄ ad quamlibet apparitionem in iudicio, secundum quod sumonitus tenuerit per se vel in cōmuni, postquam diem in iudicio recepit, post visum petitem, warratum vocatum, et post diem datum sub spe pacis vel alio modo. Et generaliter in omni casu in principio litis, ad quamlibet sumonitionem ubi cōtroversia sive placitum fuerit inter partes, & ubi fuerit iudicium, & qui iudicet inter par-

Likewise when? And it is to be known that on the first day of the suit, because it is not sufficient that it should be on the morrow, to wit, on the second, third, or fourth day, although he who has been summoned ought to await until the fourth day, that within that time he may come or send a messenger to excuse his absence, although his essoiner may not receive a day, if by chance his essoin should have no place, according to what will be said below concerning defaults. But if the party summoned is entitled to an essoin, and he causes himself to be essoined on the second or third day, the essoin shall be allowed, and a day shall be granted to the party essoined through his essoiner, and on that day there shall be allowed to the claimant a default, if he wishes to keep himself to a default, and in which case if the tenant shall not be able to excuse himself, he may lose his seysine.

13.
When a
person
may be
essoined.

And where? And it is to be known that in the judgment-hall and before his own judge and not another judge, although before him who has jurisdiction with other justiciaries, when his own judge has not jurisdiction nor coercion. But if he has through error caused himself to be essoined before another judge, the essoin will still be valid, by grace however, that the default shall be saved until judgment be rendered concerning the default, but further he can hardly be excused.

14.
Where he
can be es-
soined.

Likewise how often? And it is to be known that at each appearance in the judgment-hall, according as having been summoned he has presented himself alone or in common, after he has received a day in judgment, after a view has been claimed and a warrantor called, and after a day has been granted under the hope of peace or in some other way. And generally in every case in the beginning of a suit, at each summons, when there has been a controversy or a plea between the parties, and where there has been a judgment, and a

15.
How often
he may be
excused.

tes, & sive ab initio præcipiatur quòd vicecomes habeat corpus sine solennitate attachiamentorum, vel quòd venire faciat, vel distringat per terras & catalla, alioquin injuriosum esset vocato in jus juris beneficiū denegare. Si autem nullum sit ibi placitum nec iudicium, sed sit aliquis qui mandet aliquod ut ballivum suum, aliud erit dicendum ut supra.

f. 344 b.

CAP. IV.

1. Item excusatur alicujus absentia p infirmitatē de
De essoniis
de malo
lecti. reseantisa, de qua pvenit essonium q dicitur essonium
de malo lecti, & q semper sequitur immediate (nullo
alio essonio interjecto) essoniū de malo veniendi. Item
nec de servitio dñi regis nec de alio. Et tunc locū
habet cū quis infirmitate per malū veniendi ita fuerit
impeditus & detentus q venire non possit, & se
excusaverit per illud essoniū, & ab itinere revertatur
in domiciliū suum, & vertatur malum transiens in languorē,
quo casu videndū erit utrum talis infirmitas sit malum
trāsiens vel languor. Si autē malū transiens, post visum
habebit essoniatus alium diem per spacium xv. dierū ad
minus. Si autē languor, tunc dabitur ei unus annus & unus
dies, & ita q annus sit integer secundum q fit ex momentis,
horis, diebus, scilicet ex 365 diebus & sex horis, sive
annus sit bissextilis sive alius, nec major erit annus
bissextilis aliquo anno pcedente, die (ppter diem
excrecētem), nec hora, nec

person to judge between the parties, and whether there has been a precept from the commencement that the viscount present his body without the solemnity of attachments, or that he cause him to come, or distrain him by his lands or chattels, otherwise it would be a wrong to the party called into court to deny him the benefit of his right. But if there be no plea nor judgment there, but there is some one who sends some one as his bailiff, something else will have to be said as above.

CHAPTER IV.

f. 344 b.

Likewise the absence of any one is excused on account of infirmity keeping him at home, concerning which there is forthcoming an essoin, which is called infirmity from bed-sickness, and which always follows immediately (without any other essoin being interposed) an essoin from sickness on the way. Likewise neither concerning the service of the king, nor concerning any other service. And it has then place, when a person has been so hindered and detained by infirmity from sickness on the way that he could not come and he has excused himself by an essoin for that cause, and he turns back from his journey to his own home, and a transient illness turns into a tedious disease, in which case it is to be seen whether the said infirmity is a transient illness or a tedious disease. But if it be a transient illness, the person essoined shall have after a view another day through a space of fifteen days at least. But if it be a tedious disease, then there shall be allowed him a year and a day, and so that it be an entire year according as the year is made up of moments, hours, days, to wit, of 365 days and six hours, whether it be Leap-year or another year, nor shall Leap-year be longer than any other preceding year by a day (on account of the excrescent day), nor by an hour, nor by a

1.
Of essoins
of bed-sick-
ness.

- f. 355. momento, secundum q inferius dicetur plenius de anno et die, et talis infirmitas infra annum ppriè dicitur languor, si autem ultra annū duraverit, talis infirmitas dici poterit morbus sonticus, scilicet morbus incurabilis. Itē essoniū de malo lecti non sequitur omne essoniū de malo veniendi, quia sunt quædā brevia in quibus non sequitur nisi tantū essoniū de malo veniēdi simpliciter et per se, & nunquam essonium de malo lecti, nisi aliquando per accidēs sicut per narrationem, ubi breve de ingressu vertitur per narrationē ad breve de recto. Et quo casu, in principio litis non statim sequitur essonium de malo lecti essonium de malo veniendi, nisi tunc demū cū mutata fuerit natura brevis de ingressu in naturā brevis de recto, & eodē modo non statim sequitur essonium de malo lecti essonium de malo veniendi, nisi tūc demū cū mutata fuerit natura brevis de communia pasturæ (facta specificatione de qualitate & quātitate) in breve de recto p narrationē, sicut in brevi de quo jure & hujusmodi. Itē sequitur essonium de malo lecti essoniū de malo veniendi, & desinit sequi in fine p narrationē, ut si quis primò agat p breve de recto, habebit utrūq̃ essoniū in principio, sed cū bře de recto versum fuerit in bře de ingressu p narrationem, & tenens se posuerit in juratam, tunc desinit essoniū de malo lecti sequi essoniū de malo veniendi, cū loquela per narrationē incipiat esse alterius naturæ. Et eodē modo in brevi de recto ubi hæreditas descēdit à cōmuni stipite usq̃ ad cōjunctas personas, scilicet duos fratres vel plures vel eorū hæredes in infinitū descēdentes. In principio litis sequitur unum essonium aliud, ut

moment according to what will be said below more fully concerning a year and a day, and such an infirmity within a year is properly called a tedious disease, but if it should last more than a year, such an infirmity may be called *morbis santicus*, to wit, an incurable disease. Likewise an essoin on account of bed-sickness does not follow every essoin on account of sickness by the way, because there are some writs, in which there does not follow any essoin except only an essoin of sickness by the way simply and by itself, and never an essoin of bed-sickness, unless sometimes by accident in counting, when a writ of entry is by counting turned into a writ of right. And in which case, an essoin of bed-sickness does not immediately follow at the commencement of the suit an essoin of sickness by the way, except then indeed when the nature of a writ of entry is changed into the nature of a writ of right, and in the same manner an essoin of bed-sickness does not immediately follow an essoin of sickness by the way, except then indeed when the nature of a writ on common of pasture (upon a specification having been made of the quality and the quantity) has been changed into a writ of right by the counting, as in a writ of "quo jure" and such like. Likewise an essoin of bed-sickness follows an essoin of sickness by the way, and ceases to follow it at the end through the counting, as if a person first proceeds by a writ of right, he will have each essoin at the commencement, but when the writ of right has been turned into a writ of entry by the counting, and the tenant has put himself upon a jury, then an essoin of bed-sickness ceases to follow an essoin of sickness by the way, since the argument on account of the counting begins to be of another nature. And in the same manner in a writ of right when the inheritance descends from a common stock, down to privies in blood, to wit, two brothers or more or their heirs descending in an endless degree. At the commencement of the suit the

predictū est, sed in fine sequi desinit, cūm judicatū fuerit inde duellum, nec magna assisa jacuerit inter tales personas à cōmuni stipite venientes. Itē est & aliud b̄re de recto ubi unū essoniū aliud non sequitur, nec in principio brevis, nec in medio, nec in fine, nec aliquo tēpore, quale est breve de recto de dote, quia nunquam erit ibi duellum nec magna assisa. Et generaliter verum est q̄ ubicunque sequi possit magna assisa & duellū, & quādiu & dum sequi possit, locum habebit essonium de malo lecti, & ubicunque non sequitur duellū nec magna assisa, vel si sequi inceperint & sequi desierint, nunquā locū habebit essonium de malo

- f. 345. lecti. Item videndum, quis se essoniare possit de malo
 Britton, vi. lecti post essoniū de malo veniendi? et sciendum q̄
 ch. ix. § 1. tam masculus quān fēmina, plures vel unus. Item warrantus cūm adhuc non warrantizaverit, dum tamen languor non præcesserit, ut inferius dicitur. Item tam minor quān major, dum tamen minor infra ætatem
- teneatur de feoffamento ei facto ad breve de recto ei respondere, quia in hoc casu omnia habebit remedia quæ haberet aliquis major in causa proprietatis, licet per se respondere non possit vel jurare, potest tamen p̄ custodem & curatorem, qui (si opus fuerit) jurare poterunt ad warrantizādum essonium in animam ipsius minoris, si implacitatus fuerit de aliquo & essoniatus de malo veniendi, de quo antecessor suus non obiit seysitus ut de feodo, & ubi præsentia sua fuit necessaria q̄ ad jus respondeat. In quo casu, semper fiat mentio super essonio de minori ætate, ita scilicet, & sciendū q̄ talis est infra ætatem. Si autem petat minor in causa possessionis seysinam antecessoris sui per

one essoin follows the other as aforesaid, but at the end it ceases to follow, when a duel has been adjudged thereon, and a great assise will not lie between such persons coming from a common stock. Likewise there is also another writ of right, where the one essoin does not follow the other, neither at the commencement of the writ, nor in the middle, nor in the end, nor at any time, such as is a writ of dower, because there will never be there a duel nor a great assise. And generally it is true that, wherever a great assise and a duel can follow, there an essoin of bed-sickness will have place, and wherever neither a duel nor a great assise follows, or if they have begun to follow they have also ceased to follow, an essoin of bed-sickness will never have place. Likewise we must see, who may essoin himself for bed-sickness after an essoin for sickness on the way? and it is to be known that a male person as well as a female may do so, several or one. Likewise a warrantor, when he has not as yet warranted, provided however a tedious disease has not preceded, as will be explained below. Likewise as well a minor as a major, provided however that the minor under age is bound to answer to a writ of right concerning a feoffment made to him, because in this case he will have all the remedies, which any major would have in a cause of property, although he cannot answer nor swear by himself, he can nevertheless do so by a guardian or a curator, who (if it be necessary) can swear to warrant the essoin upon the soul of the minor, if he be impleaded concerning anything, and be essoined for sickness on the way, whereof his ancestor did not die seysed as of fee, and where his presence was necessary, that he should answer to the right. In which case let mention always be made upon the essoin concerning the minority, to wit, in this manner, "and it is to be known that so-and-so is under age." But if a minor in a cause of succession claims the seysine of his ancestor through an assise, the minor

f. 345.

assisam, nullum habebit essonium minor petens nec tenens contra eum, cū tantum operetur ejus absentia quantū p̄sentia, cū nihil dicere possit, quare assisa remaneat quin statim capiatur.

2.
Quando
fieri debet
essonium
de malo
lecti et
qualiter.

Item quando fieri debeat essonium de malo lecti & qualiter? & sciendum q̄ tertio die inclusivo, scilicet ante diem datum per essoniatorem in essonio de malo veniendi, & per duos qui non dicuntur essoniatores sed nuntii, eo q̄ mittuntur vel nuntiant ad excusationem, & non essoniant, quia diem non recipiunt nec affidant de habendo warranto suo ad aliquam diē ad pbandam excusationem, ut supra de essonio de malo veniendi, & sic mitti possit quis ad essoniandum & pbandum, vel ad essoniandū & non probādum propter dubium eventum essonii. Item est nuntius, qui aliquando mittitur vel licet non mittatur verba faciat¹ p̄ absente, quasi pro amico, & nūtiat tale impedimentum intervenisse q̄ suūmonitus venire non possit, et talis p̄priē dicitur nuntius et nō essoniator, sicut alii p̄dicti, et audiri debet sicut nuntians usq̄ ad quartū diē et quandoq̄ ulterius usque ad judiciū de defalta.

3.
Quotiens
fieri debet
essonium
de malo
lecti,
quando et
qualiter.

Itē quotiens, et sciendum q̄ in omni tempore post essonium de malo veniendi, donec adjudicatus fuerit ei languor & habuerit languorē, scilicet annū & diem, quia post languorē adjudicatū, aliquādo ex causa de volūtate petētis poterit dari essoniato licētia surgēdi, ut statim respōdeat, q̄ quidē sine voluntate petentis nulla ratione est cōcedendū ante annū & diē, & cū ita respōderit & diē habuerit, poterit post essoniū de

¹ " facit," MS. Rawl. C. 160.

plaintiff shall have no essoin nor the tenant against him, since his absence operates in the same way as his presence, since he can say nothing, wherefore the assise should be stayed from being held at once.

Likewise when ought an essoin of bed-sickness to be made, and in what manner? and it is to be known that it should be made on the third day inclusive, that is before the day given through the essoiner in an essoin of sickness by the way, and through two persons who are not called essoiners but messengers on the ground that they are sent or bring a message to make excuse, and they do not essoin, because they do not receive a day nor do they pledge themselves to produce their warrantor on any day to prove the excuse, as above concerning an essoin of sickness on the way, and so a person may be sent to essoin and to prove, or to essoin and not to prove, on account of the doubtful event of the essoin. Likewise there is a messenger, who is sometimes sent, or, although he be not sent, says words on behalf of the absent person, as if on behalf of a friend, and announces that such an impediment has intervened, so that the person summoned cannot come, and such a person is properly called a messenger and not an essoiner, as the others aforesaid, and he ought to be heard as a messenger up to the fourth day, and sometimes further up to the judgment concerning the default.

Likewise how often? and it is to be known, that at any time after an essoin of sickness by the way, until there has been adjudged to him a tedious disease, and he has had his tedious disease, to wit, a year and a day, because after a tedious disease has been adjudged, sometimes upon cause shown with the consent of the plaintiff licence of rising may be granted to the person essoined, that he may forthwith answer, which indeed without the consent of the plaintiff is not on any account to be allowed before a year and a day, and when he has so answered

2.
When an
essoins of
bed-sick-
ness ought
to be made,
and in
what man-
ner.

3.
How often
an essoin
of bed-
sickness
ought to be
made, when
and in
what
manner.

malo veniendi essoniare se de malo lecti, quia nō sufficit q languor sit adjudicatus, nisi sit adimpletus. Itē si plures fuerint p̄ticipes qui tenuerint in cōmuni, possunt omnes se essoniare si voluerint simul et uno die. Et si in essonio de malo lecti fuerit omnibus simul lāguor adjudicatus, erit languor omniū quasi unus lāguor. Si autē cū plures essoniati fuerint de malo lecti, cū visus fuerit post essoniū, poterit quibusdā adjudicari languor et quibusdā malum trāsiens, et omnes qui languidi sunt ad diē quo testificabitur languor, habebunt annū & diem apud Turrim Londō¹ et alii nō eundem diem, sed diem convenientem, cū sine aliis respondere non tenentur. Et cū semel uni vel pluribus fuerit languor adjudicatus & in iudicio testatus, nullus eorum de cætero habebit essonium de malo lecti, nisi (ut p̄dictum est) si detur licentia surgendi, sed semper essonium habebunt de malo lecti, donec unus vel plures, vel omnes simul habuerint languorem. Item poterit unus ex pluribus uno & eodem die se essoniare de malo lecti, & particeps suus unus vel plures de malo veniendi, & si illi qui de malo veniendi se essoniaverint, de malo lecti ad alium diem se essoniare non poterunt, donec constiterit de primo essonio utrum habuerit malum transiens vel languorē, quia si languorem habuerit & de hoc cōstiterit, & alius similiter se essoniaverit de malo lecti ad alium diem & haberet languorem, ita possunt esse in uno placito simul & semel duo languores, q esse non debet. Igitur cū unus ex pluribus essoniatus fuerit de malo

¹ "London" omitted, MS. Rawl. C. 160.

and has obtained a day, he may after an essoin of sickness by the way essoin himself for bed-sickness, for it is not sufficient that an essoin for a tedious disease should be adjudged, unless it should be completed. Likewise if there be several who hold in common, they may all essoin themselves, if they wish, together and on one day. And if in an essoin of bed-sickness there has been adjudged to all together an essoin for a tedious disease, the tedious disease of all shall be as it were one tedious disease. But when there are several, who have been essoined for bed-sickness, when there has been a view taken of them after the essoin, to some indeed an essoin for a tedious disease may be adjudged, and to some an essoin for a transient malady, and all who are languishing on the day on which evidence of a tedious malady shall be produced, shall have a year and a day at the Tower of London, and the others not the same day, but a convenient day, since they are not bound to answer without the others. And when once to one or several an essoin for a tedious malady has been adjudged and testified judicially, none of them shall have an essoin of bed-sickness, unless, as aforesaid, if a licence to get up is granted, but they shall always have an essoin of bed-sickness, until one or more or all together have an essoin of a tedious disease. Likewise one out of several will be able to essoin himself on one and the same day for bed-sickness, and his parcener one or more for sickness by the way, and those who have essoined themselves of sickness by the way will not be able to essoin themselves for bed-sickness upon another day, unless it has been ascertained concerning the first essoin, whether he has a transient illness or a tedious disease, because if he shall have a tedious disease and this has been ascertained, and another in like manner has essoined himself upon another day for bed-sickness and should have a tedious disease, there might be in one plea together and at the same time two tedious diseases, which ought not to be. Therefore when one out of several has been essoined for bed-sickness, essoins for

f. 345 b.

lecti, cessabunt omninò essonia de malo lecti in personis aliorū, donec sciatur utrum talis habuerit languorem vel malum transiens ppter inconueniens supradictum, & cū unus languorem habuerit, de cætero cessabūt omnia essonia de malo lecti in personis aliorum. Sed esto q cū unus ex pluribus essoniatus fuerit de malo lecti & alii cū habuerint diem per essoniatores suos se faciant essoniari de facto ad diem illum de malo lecti, iudicium essonii erit in suspenso usque ad quartum diem, in quo casu si quatuor milites venerint & testati fuerint visum & q defenderint ei languorem, tūc (ne absens sit omnino indefensus) propter necessitatem de consilio curiæ succurritur ei, ita quòd vertitur essonium de malo lecti in essonium de malo veniendi. Sed esto quòd ad diem datum per essonium capiatur inter partes dies amoris, cū uterque comparuerit ad illum diem, sequatur essonium de malo veniendi, & si se essoniaverit de malo lecti, eodem modo poterit verti essonium de malo lecti in essonium de malo veniendi ut prius. Et sic fieri poterit in omni casu ubi jacuerit essonium de malo veniendi, sed si nullum, erit hoc defalta, sed nunquam vertitur essonium de malo veniendi in essoniū de malo lecti. Quandoq̃ vertitur essoniū de malo veniendi in essonium de malo lecti. Quādoq̃ vertitur essonium de malo lecti in essoniū de malo veniendi ex necessitate & de consilio curiæ, & ita q habebit duo essonia quolibet post aliud sine apparitione, & sic cum unus ex pluribus languorē habuerit, extunc cessabunt omnia essonia de malo lecti in toto placito illo sive tenentes warrantū vocaverint sive non. Si autem dederint ei malum transiens, tunc primo tenebit essonium secundū

bed-sickness shall cease altogether in the persons of the others, until it be known whether so-and-so has a tedious disease or a transient illness, on account of the inconvenience aforesaid ; and when one of them shall have a tedious disease, thereupon all essoins for bed-sickness shall cease in the persons of the others. But let it be that, when one out of several shall have been essoined for bed-sickness, and the others, when they shall have had a day through their essoiners, cause themselves to be essoined in fact upon that day for bed-sickness, the judgment upon the essoin shall be in suspense until the fourth day, in which case, if four knights have come and testified to their view and that they deny a tedious disease on his part, then (that an absent person shall not be altogether undefended) on account of the necessity upon the advice of the court he is so far succoured, that his essoin for bed sickness shall be converted into an essoin for sickness on the way. But let it be that upon the day given through the essoin a day of love be taken between the parties, when each has appeared on that day, let an essoin for sickness on the way follow, and if each has essoined himself for bed-sickness, in the same manner the essoin for bed-sickness may be converted into an essoin for sickness on the way, as before. And so it may be done in all cases, where an essoin of sickness by the way has lain, but if none, this will be a default, but an essoin of sickness by the way is never turned into an essoin for bed sickness, Sometimes an essoin for sickness by the way is turned into an essoin for bed-sickness. Sometimes an essoin for bed-sickness is turned into an essoin for sickness on the way from necessity and upon the advice of the court, and so that he shall have two essoins each after the other without an appearance, and so, when one out of several shall have had a tedious disease, thenceforth shall cease all essoins for bed-sickness in that entire suit, whether the tenants have vouched a warrantor or not. But if they have granted to him a tedious disease, then for the first time a second essoin for bed-sickness shall hold good in

de malo lecti in psona alterius essoniati. Si autē quatuor milites non venerint infra quartum diem nec primò essoniatus, tunc eodem modo & eadē necessitate (ut prædictum est) vertitur essoniū de malo lecti in essoniū de malo veniendi, donec sciatur utrum primò essoniatus de malo lecti habuerit languorē vel non, & ad omnes dies sequentes erit ut p̄dictū est, secundum q̄ testatum fuerit p̄ quatuor milites. Si autē partitio facta fuerit inter plures cohæredes de communi hæreditate, & ita q̄ quilibet respōdere debeat de pte sua in principio litis antequā omnes simul cōparuerint, quilibet p̄ se habere poterit essoniū de malo lecti & quilibet languorem, & ita quòd plures esse possunt languores post divisionem hæreditatis: ut de termino S. M. añ regis H. ix. incipiente x. in cōm Suff., de Salomone de S. Edmūdo & Oliva filia Andreae. Sed cū omnes cōparuerint in curia et ita q̄ nullus sine alio velit respondere, tunc aliud erit ut in primo casu, nisi quis habere poterit duo essonia de malo veniendi simul ppter necessitatē, ita q̄ ex necessitate possit quis habere duo essonia de malo veniendi.

4.
Si quis
habere
possit duo
essonia de
malo veni-
endi simul
propter
necessi-
tatem.

Esto q̄ quis implacitatus fuerit de diversis placitis, & in uno eorundē fuerit ei languor adjudicatus, et in alio placito se semel essoniaverit de malo veniendi, & diem habuerit, & ad quē diem venire possit¹ nec mittere, cū attornatū nō fecerit, ne sequatur essonium de malo lecti, si se iterum essoniaverit de malo veniendi, aut de necessitate allocabitur ei essonium de consilio curiæ, vel suspēdetur p̄cessus illius loquelæ, quousq̄ essoniatus comparere possit post languorem, &

¹ "non possit," MS. Rawl. C. 160.

the person of the second person essoined. But if the four knights have not come within the fourth day nor the person essoined in the first place, then in the same manner and by the same necessity, as above said, the essoin of bed-sickness is turned into an essoin of sickness by the way, until it be known whether the person essoined in the first place for bed-sickness has a tedious disease or not, and on all the following days it will be as aforesaid, according to what shall have been testified by the four knights. But if a partition shall have been made between several coheirs of a common inheritance, and so that each ought to answer for his own part at the commencement of the suit before all have appeared together, each for himself may have an essoin for bed-sickness, and each for a tedious disease, and so that there may be several essoins for a tedious disease after the division of the inheritance, as in Michaelmas term in the ninth and tenth years of king Henry in the county of Suffolk, concerning Solomon of St. Edmund and Oliva the daughter of Andrew. But when all have appeared in the court and so that none is willing to answer without another, then it will be otherwise as in the first case, unless a person may have two essoins for sickness on the way at the same time on account of necessity, so that from necessity a person may have two essoins for sickness on the way. f. 346.

Let it be that a person has been impleaded in several suits, and in one of them an essoin for a tedious disease has been adjudged to him, and in the other suit, he has once essoined himself for sickness on the way, and has had a day, and on which day he neither could come nor send, since he had not appointed an attorney, lest an essoin should follow for bed-sickness, if he should a second time essoin himself for sickness on the way, either of necessity there will be allowed to him an essoin upon the advice of the court, or the process of the trial will be suspended, until the person essoined is able to appear after a tedious disease, and proceedings shall not be had

4.
If a person may have two essoins for sickness on the way at the same time from necessity.

non pcedetur ad defaltam: ut de termino P. anno regis H. xvi. in comitatu Norf. de Galfrido filio Baldwini. Item q non proceditur ad defaltam in uno placito propter essonium de malo lecti in alio, inveniri poterit de termino S. M. anno regis H. xv. incipiente xvi. in comitatu Midd., de Gylberto de Hendon, & hoc maximè si placitum emerit post languorem adjudicatū. Item erit, si languidus post languorem adjudicatum vocatus fuerit ad warrantum, secundum quod evenit de prædicto Galfrido. Item quod allocari debeat essonium in prædicto casu, quòd aliàs non esset licitum, pbatur de termino S. M. anno regis H. vi. incipiente vii. in comitatu Norf., de Erimnarda de Pocotte & quodam Johanne, qui se essoniavit versus eam de malo veniendi de uno placito, & cui fuit languor adjudicatus in alio placito, & quamvis essonium de malo veniendi non jaceret, fuit tamen ei allocatū de consilio curiæ ppter necessitatem, quia honestius fuit essonium allocare ex causa, quàm procedere ad defaltam, cū essoniatus non esset in culpa.

5.
Si vir et
uxor se
simul es-
soniaverint
de malo
lecti.

Si vir & uxor se simul essoniaverint primò de malo veniendi, poterunt se simul essoniare de malo lecti ad alium diem si voluerint, & simul habere languorem, sed non erunt ibi plures languores sed unus, ppter juris unitatem. Item poterunt se vicissim essoniare si voluerint tam de malo veniendi quā de malo lecti, & secundum q supradictum est, donec habuerint languorem ambo simul vel alter eorum per se. Sed cū ambo primo die simul essoniati fuerint de malo veni-

to a default : as in Easter term in the sixteenth year of king Henry in the county of Norfolk, concerning Godfrey the son of Baldwin. Likewise that proceedings are not had to a default in one suit on account of an essoin of bed-sickness in another, may be found in Michaelmas term in the fifteenth and sixteenth years of king Henry in the county of Middlesex, concerning Gylbert of Hendon, and this chiefly if the suit has emerged after an essoin for a tedious disease has been adjudged. Likewise it will, if a sick man, after an essoin for a tedious disease has been adjudged, has been vouched to warrant, according to what happened in the case of the aforesaid Godfrey. Likewise that an essoin ought to be allowed in the aforesaid case, which otherwise would not be allowable, is proved in Michaelmas term in the sixth and seventh years of king Henry in the county of Norfolk, concerning Erimnard de Pocotte and a certain Johannes, who essoined himself against her for sickness in the way in one suit, and to whom an essoin for a tedious disease was adjudged in another suit, and although an essoin for sickness by the way would not lie, nevertheless it was allowed to him on the advice of the court on account of necessity, because it was more honest to allow an essoin for a cause than to proceed to a default, when the party essoined was not in fault.

If husband and wife have together essoined themselves in the first place for sickness on their way, they may together essoin themselves for bed-sickness to another day, if they are so minded, and may together have a tedious disease, but there shall not be there several tedious diseases, but only one, on account of their unity of right. Likewise they may essoin themselves in turns if they wish as well for sickness on the way as for bed-sickness, and according to what has been said above, until both together have had an essoin for a tedious disease, or one or other of them alone. But when both have been on the first day essoined together for sickness on the way, and on another day the man

5.
If husband
and wife
have es-
soined
themselves
at the same
time for
bed-sick-
ness.

endi, & ad alium diem compareat vir & uxor, & vir
 essoniatus fuerit de malo lecti, & ad diem datum, cū
 essoniatus visus fuerit testatum fuerit per milites quōd
 sit malum transiens, & uxor eodem die se essoniaverit
 de malo lecti, quæritur an sit essonium allocandū im-
 mediātē post apparitionem, cū semel in curia com-
 paruerit post essoniū de malo veniendi, & non erit
 allocandum, quia essonium de malo lecti semper sequi-
 tur essonium de malo veniendi immediātē, & de appa-
 ritione tempore medio tollitur omninō essonium de
 malo lecti, & per aliud essonium immediātē, sicut de
 servitio domini regis si procedat essonium de malo
 lecti, vel si aliud intervenerit vel non, idem erit di-
 cendum. Post essonium vero de malo lecti, nunquam
 f. 346 b. jacebit essonium de malo veniendi de tempore præte-
 rito, & non nisi sumōnita fuerit loquela, & posita
 coram justiciariis itinerantibus quasi ex nova sumōni-
 tione, vel nova resumōnitione, post iter justic. cū quis
 ad ultimū diē essoniatus fuerit in bāco, & languor ei
 adjudicatus non fuerit, & licentiam habuerit surgendi,
 occasione itineris justic. Itē esto q vir essoniatus fue-
 rit de malo lecti & milites forte ad diem datum non
 venerint, & uxor se essoniaverit de malo veniendi, &
 diē habuerit per essoniatores suos, & milites attachi-
 ati fuerint, & eundem diem habuerint, ad quem si
 milites non venerint oportet q uxor compareat, et si
 defaultam fecerit, defaulta sua erit utriq dānosa, ita q
 uterque amittet p defaultā unius, quicumq illorū defal-
 tam fecerit, quia res sive tenementa uxoris non reci-
 piūt divisionē, sicut inter cohæredes et p̄ticipes. De
 hac materia inveniri poterit de termino S. H. anno

and his wife have appeared together, and the man has been essoined for bed-sickness, and on the day given to him, when the person essoined has been viewed, it has been testified by the knights that it is a transient illness, and the wife on the same day has essoined herself for bed-sickness, it is asked whether an essoin is to be allowed immediately after the appearance, when she has once appeared in court after an essoin for sickness by the way, and it will not be allowable, because an essoin for bed-sickness always follows an essoin for sickness by the way immediately, and by the appearance in the meantime an essoin for bed-sickness is altogether taken away, and by another essoin immediately, as concerning the service of the king, if an essoin for bed-sickness proceeds, or if another has intervened or not, f. 346 b. the same thing will have to be said. But after an essoin for bed-sickness an essoin for sickness on the way will never lie concerning time which is past, and not unless the trial has been summoned and placed before the justices itinerant as if upon a new summons or a new resummons, after the iter of the justiciaries, when a person on the last day has been essoined in the bench, and there has not been adjudged in his case an essoin for a tedious disease, and he has had liberty to leave his bed, on occasion of the iter of the justiciaries. Likewise let it be that a husband has been essoined for bed-sickness, and the knights by chance have not come upon the day given to him, and the wife has essoined herself for sickness on the way, and has had a day through her essoiner, and the knights have been attached, and have had the same day, upon which if the knights have not come, it is incumbent that the wife should appear, and if she has made default, her default will be damaging to both, so that both shall lose through the default of one, whichever of them has made default, because the estate or tenements of the wife do not admit of division, as between coheirs and parceners. On this subject a case will be found in Hilary term in the thirteenth year of

regis H. xiii. in cōm Devoñ de Thoma de Tyndland. Et oportet q̄ appareat ad omnes dies sine essonio, donec visus factus fuerit de viro suo, postquā semel habuerit essoniū de malo veniendi, quia plura habere non poterunt anteqm simul cōpareant vir & uxor, et idē dicatur de viro, cūm uxor essoniata fuerit de malo lecti. Si autē bis se essoniaverit, tunc observetur ut supradictū est. Itē cūm quis plures warrantos vocaverit sive sit tenens unus sive plures, si tale sit placitū & tale breve q̄ sequi debeant essonia de malo lecti, tunc videndū erit, utrū tenentes qui warrantū vocaverint languorē habuerint, quidam, vel omnes, vel non. Si autem languorē habuerint, warranti languorē non habebunt, tenentes vero essonium habebūt de malo lecti, donec warranti warrantizaverint, & warranti nullū, antequā warrantizaverint, cū autē warrantizaverint, tunc primò habebunt essonia de malo lecti, cū warrantizaverint, sicut ipsi principales tenētes donec semel habuerint languorem.

6. Videndū inter cætera, ad quæ brevia ptineant imēdiatē duo essonia. In quo casu necesse erit q̄ in essoniis de malo lecti allocandis, primò inspiciantur brevia originalia, inter quæ inveniri poterunt duo brevia, à quibus generaliter duo pcedunt essonia, scilicet breve de recto de terra, sed non breve de recto de dote, quia ad bñe de recto de dote, non jacet essoniū de malo lecti, ex quo non sequitur ex eo duellū, nec magna assisa. Item duo sequuntur essonia quodā breve de

Ad quæ
brevia per-
tinent duo
essonia de
malo veni-
endi et
similiter de
malo lecti.

king Henry in the county of Devon, concerning Thomas de Tyndland. And it is incumbent that she should appear every day without an essoin, until a view has been had concerning her husband, after he shall have once had an essoin for bed-sickness, because they will not be able to have more before the husband and the wife have appeared together, and the same may be said concerning the husband, when the wife has been essoined for bed-sickness. But if she has twice essoined herself, then let it be observed as aforesaid. Likewise when a person has vouched several warrantors, whether there be one tenant or several, if the suit be such and the writ such, that essoins for bed-sickness ought to follow, then it will have to be seen whether the tenants who have vouched a warrantor have had an essoin for a tedious disease, some or all, or not so. But if they have had an essoin for a tedious disease, the warrantors shall not have an essoin for a tedious disease, but the tenants shall have an essoin for bed-sickness, until the warrantors have warranted, and the warrantors shall have none, before they have warranted, but when they have warranted, then they shall have in the first place essoins for bed-sickness, if an essoin for a tedious disease has not preceded, and they may in turns essoin themselves for bed-sickness, when they have warranted, just as the said principal tenants, until they shall once have had an essoin for a tedious disease.

We must amongst other things see to what writs two essoins immediately appertain. In which case it will be necessary that in allowing essoins for bed-sickness, the original writs should first be inspected, amongst which will be found two writs, from which generally two essoins proceed, to wit, a writ of right concerning land, but not a writ of right concerning dower, because upon a writ of right concerning dower an essoin for bed-sickness does not lie, since from it neither the duel nor a great assise proceeds. Likewise two essoins fol-

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P

6.
To what
writs two
essoins for
sickness by
the way
and in like
manner for
bed-sick-
ness apper-
tain.

recto q vocatur præcipe, sicut illud, ubi quis terram quam petit clamat tenere de dño rege in capite, quod immediate terminari debet in curia domini regis. Est etiam aliud breve quod loquitur de servitio & consuetudine. Item breve de advocacione ecclesiæ, quod similiter immediatè terminari debet in curia regis. Est etiam quoddam breve quod vocatur præcipe, à quo per accidens & ex discretione justiciarii duo procedunt essonia, in quo fit mentio de longinquo ingressu, verbi gratia.

7. Præcipe A. quòd juste &c. reddat tali abbati tantam
 Ubi verti-
 tur breve
 de ingressu
 per narra-
 tionem et
 e contrario.
 f. 347. terram cum pertinentiis in tali loco, quam clamat esse
 jus ecclesiæ suæ, et in quam idem A. non habet in-
 gressū nisi per B. quondam abbatem talem, qui sine
 assensu & voluntate capituli sui illam dimisit &c. Et
 in hujusmodi brevibus, priusquam fiat judicium de e-
 ssonio de malo lecti si factū fuerit, sunt à justiciariis
 inquirenda in hoc casu hujusmodi. Inquirendum est à
 petente per quantum tempus adversarius suus terram
 illam tenuit, & quando abbas obiit per qm ingressum
 habuit, si verò dicat q per 30 vel 40 annos vel am-
 plius, tunc admittatur essoniū de malo lecti & hac
 ratione, quia cū alii abbates medii & conventus sem-
 per permiserunt ipsum tenentē sine clameo, & postea
 post pdictum ingressum de tali ecclesia possēt alii
 abbates succedentes cum consensu conventus cōfirmare
 factum primi abbatis, videtur & psumendum est quòd
 ipse tenens justè possideat & justo titulo, donec pbetur
 in contrarium, unde facilius in hoc casu admittitur
 essonium de malo lecti. Sed quæro quare pcessum
 est per tale breve, cū breve de ingressu non excedat
 tempus assisæ mortis antecessoris. Responsio. Per

low a certain writ of right, which is called a *præcipe*, like that where a person claims to hold land, which he seeks, from the lord the king in chief, which ought to be immediately determined in the court of the lord the king. There is likewise another writ which speaks of service and custom. Likewise a writ concerning the advowson of a church, which in like manner ought to be determined in the court of the king. There is likewise a certain writ which is called a "præcipe," from which by accident and from the discretion of the judge two essoins proceed, in which there is mention of a remote entry, for instance.

Enjoin A. that he justly &c. restore to such an abbot so much land with its appurtenances in such a place, which he claims to be the right of his church, and into which A. has no entry except through B. formerly such abbot, who demised it without the assent and will of his chapter. And in writs of this kind before judgment is given upon an essoin of bed-sickness, if it has been made, inquiries of this kind are to be made by the justiciaries. It is to be inquired from the plaintiff for how long a time his adversary has held that land, and when the abbot died through whom he had entry, but if he should say, that he has held it for thirty or forty years or more, then let an essoin of bed-sickness be admitted, and for this reason, because since other intermediate abbots and the convent have always permitted him to be tenant without making a claim against him, and afterwards, after the aforesaid entry, other successive abbots of the said church might with the consent of the chapter have confirmed the act of the first abbot, it seems and it is to be presumed that the said tenant possesses justly and with a just title, until it be proved to the contrary, whence there is admitted more readily in this case an essoin of bed-sickness. But I ask wherefore are proceedings taken by such a writ, since a writ of entry does not exceed the time of an assise of mortdancer. The an-

7.
When a writ of right is turned into a writ of entry by the counting and contrariwise.

f. 347.

talē narrationē & interrogationem non stat in vigore suo, nec retinet virtutem brevis de ingressu, imō illam excedit, et cū p narrationem contra sui ipsius naturam incipiat esse q non fuit, ejus habebit naturam q incipit esse, & omnia habebit remedia quæ breve de recto, et maxime quantum ad essonia, secundum q superius dictum est. Item duo jacent essonia in brevibus de divisio, et si aliqua particula terræ remanet in contentione, et ubi pcessum est sicut per breve de recto, & tunc demum jacent, cū terra illa fuerit specificata. Item jacent duo essonia de servitio et consuetudine, postquā deforceator responderit, et certum est¹ quid deduxerit in certū judicium, quia ad duelum vel magnam assisam pcedi non potest, nisi super certa re & expressa. Item in quolibet brevi, ubi quis excedit formam brevis et loquitur de jure, et in quibus interscritur narratio, ut de jure, sicut aliquando cōtingit in brevi quo jure, et aliis, et ubi pervenitur ad magnam assisam, jacet essoniū de malo lecti, ut infra pleniū dicetur. Et sciendum q non ad omne breve, q vocatur & incipit per p̄cipe, sequitur essonium de malo lecti, quia sunt plura quæ incipiunt per p̄cipe, quæ in nullo tangunt jus merum, quia sunt de ingressu ad firmam & ad terminum, vel breve q sequitur post novam disseysinam, ubi juratores fuerunt electi & visus terræ factus fuit, et quod fertur super disseysitorem vel filium ejus et hæredem vel alium ab eo qui disseysitus est vel ejus hærede. In brevibus vero de recto, quæ vocantur p̄cipe, & ubi duo jacent essonia, placitum ita aliquando mutari possit, quòd nullum jacebit essonium de malo lecti post mutationem illam, verbi gratia. Esto quòd petens petat terram aliquam de seysina avi sui, & dicat omnia verba

¹ "est" omitted, MS. Rawl. C. 160.

swer. By such counting and interrogatories it does not remain in its original vigour, nor does it retain the character of a writ of entry, nay, it exceeds it, and since by the counting contrary to its own nature it begins to be that which it was not, it will have the nature of that which it begins to be, and it will have all the remedies, which a writ of right has, and especially as far as regards essoins, according to what has been said above. Likewise two essoins lie in writs of partition, and if any particle of land remains in dispute, and where proceedings are had as by a writ of right, and then at last they lie, when the land has been specified. Likewise two essoins lie concerning a service and a custom, after the deforceant has answered, and he has deduced something certain to a certain judgment, because proceedings cannot be had to a duel or a great assise, except upon a certain and express thing. Likewise in any writ, where a person exceeds the form of the writ, and speaks of the right, and in which a count is inserted, as concerning the right, as sometimes happens in a writ of *quo jure* and others, where they arrive at a great assise, an essoin of bed-sickness lies, as will be explained below more fully. And it is to be known that upon every writ, which is called and begins with *præcipe*, an essoin of bed-sickness does not follow, because there are several which begin with *præcipe*, which in no respect touch the absolute right, because they are concerning the entry upon a farm and for a term or a writ which follows after novel disseysine, where the jurors have been chosen and a view has been had of the land, and which is directed against the disseysor or his son and heir, or another person from him who has been disseysed by him or his heir. But in writs of right which are called *præcipe*, and where two essoins lie, the plea may be sometimes so changed, that no essoin will lie concerning bed-sickness after that change, as for instance. Let it be that the plaintiff claims some land of the seysine of his grandfather, and

pertinentia ad duellum, & adjiciat quòd avus suus inde obiit seysitus, ut de feodo & jure, & quòd idem tenens non habet ingressum in terram illam, nisi per hoc quòd intrusit se in eandem post mortem avi sui, dum idem petens vel pater ipsius petentis fuit infra ætatem, vel alio modo, ut si dicat, & in quam non habet ingressum nisi per hoc quòd posuit se in terram illam, ut capitalis dominus, post mortem ipsius talis avi sui die quo obiit, & unde fiat jurata per judicium curiæ et per consensum partium, s. si tam petens quàm tenens in hoc consenserint, q aliter fieri non debet

f. 347 b. nisi ambo in juratam se posuerint, tunc statim cessabit essonium de malo lecti, secundū q superiùs fit mentio. Eodē modo impediri poterit essoniū de malo lecti, si finis objiciatur, qui factus fuit inter antecessorē ipsorum, & aliis modis consimilibus, ubi de consensu tenētis fit descēsus in brevi de recto usquē ad juratam, & èconversò in brevibus de ingressu, in quibus inprimis non jacuit nisi unicū essonium de malo veniendi. Accrescit aliquando per narrationem essonium de malo lecti, quia esto q tam petens quàm tenens omittat loqui de ingressu in narratione sua, & proponat in narratione sua de jure & proprietate, & inde (sicut sæpius contingit) emergat magna assisa vel duellum vel alia forma processus, ingressu prætermisso,¹ quod tamen rarò accidit, nisi de consensu partium, statim post diem datū partibus, poterit tenens se essoniare de malo veniendi, & postea de malo lecti, & hoc provenit ex narratione juris, potius quàm ex virtute brevis originalis. Et hoc prima facie videtur

¹ "prætermisso," MS. Rawl. C. 160.

says all the words appertaining to a duel, and adds that his grandfather died seysed thereof as of fee and of right, and that the said tenant has no entry into that land, except through these means, that he intruded himself into it after the death of his grandfather, whilst the said plaintiff or the father of the said plaintiff was under age, or in some other manner, as if he should say, and into which he has no entry except through these means that he put himself into that land, as a chief lord, after the death of his said grandfather on the day on which he died, and whereupon a jury is appointed through a judgment of the court and with the consent of the parties, to wit, if both the claimant and the tenant have agreed to this, which otherwise ought not to be done unless both have put themselves upon a jury, then forthwith an essoin of bed-sickness shall f. 347 b. cease, according to what has been above mentioned. In the same way an essoin of bed-sickness may be hindered, if a fine be objected, which has been made between the ancestors of the said parties, and in other consimilar ways, where with the consent of the tenant a descent is made in a writ of right down to a jury, and conversely in writs of entry, in which at first there lay only a single essoin of sickness by the way. An essoin of bed-sickness accrues sometimes through the counting, because let it be, that as well the claimant as the tenant omits to speak of the entry in his counting, and propounds counts respecting the right and the property, and thereupon (as happens frequently) a great assise or a duel results or some other form of process, the entry having been by the way omitted, which however rarely happens, except with the consent of parties, forthwith after a day has been assigned to the parties, the tenant may essoin himself for sickness by the way, and afterwards for bed-sickness, and this arises from the counting of the law, rather than in virtue of the original writ. And this at first sight seems to be contrary to that

esse contrarium ei q̄ dicitur, quòd secundū brevia originalia judicanda sunt essonia, & ab eis pcedunt. Ad q̄ sic poterit responderi, quòd quamdiu breve originale stetit in suo vigore, tantum unicū sequebatur essoniū. Sed postquā per narrationem partium & consensum eorū locum non tenuit & mutata narratione in jure pcessum est, tunc ad essonium de malo lecti pervenitur, & pcedendū erit tanquam ab initio pcessum esset p breve de recto. Et de hiis quæ dicta sunt hic fit superius mentio de brevi de ingressu, sed hic fit repetitio ut addatur.

CAP. V.

1.
Qualiter
essonium
de malo
veniendi
debeat
irrotulari
et judicari
de servitio
domini
regis.

Quia diversimodè fit irrotulatio essoniorum secundum diversitatē brevium & placitorum, ad instructionem minorum dicendū erit de irrotulatione. Sed quia de modo irrotulationis dictum est supra de illis qui peregrè pfecti sunt ultra mare, sive in Terram Sanctam pro generali passagio, sive pro simplici peregrinatione, sive citra mare Græcorum in peregrinatione versus S. Jacobum vel alibi, ideo de modo peregrinationis hñodi non erit hic repetendū, sed de servitio dñi regis, ita videlicet A. de N. qui est in servitio dñi regis ultra mare vel citra, essoniatur versus talem de tali placito per talem, & in quo casu differri poterit loquela quamdiu essoniatus fuerit in servitio domini regis, dum tamen habet ad manum quolibet die warrantum suum breve domini regis.

which is said, that essoins are to be judged according to the original writs, and they proceed upon them. To which it may be thus answered, that as long as the original writ has stood in its proper vigour, only a single essoin followed. But when from the counting of the parties and through their consent it has not kept its place, and the counting having been changed the proceeding has come to touch on the right, then an essoin for bed-sickness is arrived it, and the proceeding will have to be had, as if it had been from the beginning by a writ of right. And concerning the subjects here discussed mention has been previously made in treating of a writ of entry, but the repetition is made here, in order that an addition may be made.

CHAPTER V.

Because the enrolment of essoins is made in different modes according to the diversity of writs and suits, for the instruction of the juniors we must speak of enrolment. But because concerning the mode of enrolment we have spoken above concerning those who have set forth on a journey abroad beyond the sea, whether it be to the Holy Land for a general passage, or for a single pilgrimage, or within the sea of the Greeks on a pilgrimage towards St. James or elsewhere, on that account we need not repeat here anything concerning the mode of the pilgrimage, but concerning the service of the lord the king; thus forsooth, A. de N., who is in the service of the lord the king beyond the sea or within it, is essoined against so-and-so in such a suit by so-and-so, and in which case the trial in court may be deferred for as long as he has been essoined in the service of the lord the king, provided however that he have at hand on a certain day as his warranty a writ of the lord the king.

1.
How an
essoins of
sickness
by the way
ought to
be enrolled
and ad-
judged con-
cerning the
service of
the lord the
king.

2. Item si quis se essoniaverit de malo veniendi unus
 Qualiter de
 simplici
 essonio de
 de malo
 veniendi.
 f. 348.

versus unum, tunc fiat sic irrotulatio de simplici essonio. Talis versus talem de tali placito per talē, & ita q̄ semper in principio fiat mentio de cōm in margine, & hoc si tantum fit unus petens & unus tenens, & quilibet eorum poterit se essoniare semel & simul eodem die sūmonitionis vel vicissim, modo unus, modo alius, si petens hoc voluerit. Et ideo petenti competit essonium, quia non licet in hoc casu tenenti quod petenti non liceat, & sic fiat irrotulatio de petēte cū tenens se essoniaverit. Et idem talis, s. petens versus talē, s. tenentē de eodē per talē. Et hoc si ambo se simul & eodē die essoniaverint, si autē vicissim, & tenens se priūs essoniaverit, & petens cōparuerit, & eundem diem in curia receperit, ad aliū diē (si voluerit) se essoniare poterit, & e conversò. Si petēs primo die se essoniaverit, & tenens cōparuerit, & eundē diem receperit, ad aliū diē se essoniare poterit, & ita multotiens quamdiu petens essoniatus fuerit. Si autē plures sint ibi participes tenentes in cōmuni vel separatim, quilibet habebit essoniū suū, & suū essoniatōrē, dum tamē si in cōmuni, poterūt se essoniare omnes simul, & eodem die vel vicissim, unus vel plures, donec quilibet habuerit unicum essonium, si voluerit, antequā cōpareat, & non plura, & tunc fiat irrotulatio sic. Talis, s. tenens versus talem, s. petentē de tali placito p̄ talē. Et eodem modo dicatur de aliis tenentibus omnibus, qui se essoniaverint, & de illis qui

Likewise if any one has essoined himself for sickness 2.
on the way, one against one, then let there be an enrol- How con-
cerning a
single
essoin of
sickness on
the way.
ment of a simple essoin thus : So-and-so against so-and so
in such a suit through so-and-so, and so that always in
the beginning mention be made of the county in the
margin, and this if there be only one claimant and one
tenant, and each of them may essoin himself once and
at the same time on the day of summons or in turns,
first one and then the other, if the claimant wishes this.
And accordingly the claimant is entitled to an essoin,
because the tenant in this case is not allowed anything
which is not allowed to the claimant, and let there be
an enrolment concerning the claimant, when the tenant
has essoined himself, thus : “ And the said so-and-so, to f. 348.
“ wit, the claimant, against so-and-so, to wit, the tenant,
“ concerning the said suit through so-and-so.” And this
if both have essoined themselves together and on the
same day ; but if in turns, and the tenant has first
essoined himself, and the claimant has appeared, and
has had the same day given to him in court, he will be
able to essoin himself to another day, if he chooses, and
conversely. If the claimant on the first day has essoined
himself, and the tenant has appeared, and has had given
to him the same day, he may essoin himself to another
day, and so for as many times as the claimant shall have
been essoined. But if there be several parceners there
in common or separately, each shall have his own essoin
and his own essoiner, provided however, if they are par-
ceners in common, they may all essoin themselves to-
gether and on the same day, or in turns, one or more,
until each of them has had a single essoin, if he shall
wish it, before he appears, and not more, and then let
the enrolment be thus : So-and-so, to wit, the tenant,
against so-and-so, to wit, the claimant in such a suit
through so-and-so. And in the same manner let it be
said concerning all the tenants who have essoined them-
selves, and to those of them who are present the same

præsentes fuerint, dabitur idem dies, & contra absentes pcedendum erit ad defaltam. Si autē plures sint tenentes qui tenuerint p̄ diviso, quilibet habebit essionium suum sed non vicissim ut supra. Si autē unus tenens vel plures se essioniare debeant versus plures petentes, nō oportet mentionē facere de omnibus petentibus, sed de uno tantū, & de aliis in brevi nominatis, & eodem modo fiat de uno petente vel pluribus versus tenentes plures.

3. Si autem warrantus vocatus fuerit ab uno tenente vel pluribus, unus warrantus vel plures, quilibet ipsorū unicum habebit essioniū (si voluerit) simul vel vicissim, tam tenens qui vocavit, quā warrantus qui vocatur, unus sive plures, & unde cū warrantus se essioniaverit, sic fiat irrotulatio : Talis warrantus, s. quem talis, s. tenens, vel alii tales vocaverunt ad warrantū, versus talem petentem, vel tales, de tali placito per talem. Si autem tenens præsens fuerit, habebit eundem diem, si autem eodem die se essioniaverit, tunc fiat irrotulatio sic : Idem talis, s. tenens versus eundem, s. petentem de eodem p̄ talem. Si autem defaltam fecerit, sequatur petens defaltam. Si autē tenens se essioniaverit & warrantus cōparuerit, habebit eūdem diem. Si autē defaltā fecerit, expectet tenens vel ejus essioniator quartū diem, & tunc si non venerit, pcedatur ad defaltā, & q̄ dicitur de uno tenente & uno warranto essioniato, vel non essioniato, dicatur de pluribus tenentibus & attornatis. Et in fine notandū, q̄ nec tenens versus warrantum nec warrantus versus tenentem, sed

Si warrantus vocatus fuerit.

day shall be given, and against the absent proceedings shall be had to a default. But if there be several tenants who hold their share in division, each shall have his own essoin, but not in turns as above. But if one or more tenants ought to essoin themselves against several claimants, it is not incumbent to make mention of all the claimants, but of one only and of the others named in the writ, and in the same manner let it be done concerning one or more claimants against several tenants.

But if a warrantor has been vouched by one or more tenants, one or more warrantors, each of them shall have a single essoin (if he should wish it) together or in turns, as well the tenant who has vouched him, as the warrantor who is vouched, one or more, and hence when the warrantor has essoined himself, let the enrolment be made thus : Such a warrantor, to wit, whom so-and-so, to wit, the tenant or other such persons, have called to warrant against so-and-so the claimant or such claimants in such a plea through so-and-so. But if the tenant be present, he shall have given to him the same day, but if he has essoined himself on the same day, then let there be an enrolment thus : The said so-and-so, to wit, the tenant, against so-and-so, to wit, the claimant, concerning the said suit through so-and-so. But if he has made default, let the claimant follow up the default. But if the tenant has essoined himself and the warrantor has appeared, he shall have the same day given to him. But if he has made default, let the tenant or his essoiner await the fourth day, and then if he has not come, let proceedings be had to a default, and what is said concerning one tenant and one warrantor who has been essoined or not essoined, may be said of several tenants and persons attourned. And in the end it is to be noted, that neither the tenant shall essoin himself against his warrantor, nor the warrantor against the tenant, but each of them shall essoin himself against

3.
If a war-
rantor has
been
vouched.

quilibet eorum se essoniabit versus principalem petentem, & sive petens sive warrantus se essoniaverit, semper exigatur ille, qui se non essoniavit.

CAP. VI.

1.
Qualiter
essonium
de malo
venienti
judicatur.

f. 348 b.

Et ut¹ essonia de malo veniendi unde judicentur, inprimis inspicienda sunt brevia originalia, maximè si placitum novum fuerit, vel brevia judicialia, si sit novum, ut per hoc scire possit utrum essonium jaceat vel nōn. Si autem placitum novum sit & breve venerit, tunc fiat mentio in margine quòd placitum novum sit. Si autem breve non venerit, eodem modo fiat mentio in margine q non breve, sed allocetur essonium si petens venerit, & dicatur ei, q habeat breve suum ad alium diem per aliud breve vicecomiti directum.

2.
Si breve
originale
non vene-
rit, breve
vicecomiti
quod faciat
aliud ve-
nire.

Rex vicecomiti salutē. Præcipimus tibi q venire facias corā justiciariis &c. breve nostrū quod tibi venit de placito, quod suūmonitum est in curia nostra coram justiciariis &c. inter talem petentem & talem tenentem, de tanto terræ cum pertinentiis in tali villa, vel aliter: breve nostrum q tibi venit de suūmonendo talem q esset coram &c. ad respondendum tali mulieri de dote sua quæ eam contingit de libero tenemento, quod fuit talis quondam viri sui &c. vel aliter: talem querentē² et talem de attachiando talem de tali placito, et ita quòd semper fiat mētio in tali brevi de brevi originali quale fuerit, et tunc sic: Et tu ipse tunc sis ibi auditurus judiciū tuum de hoc, q breve illud præfatis justiciariis non misisti ad talem diem,

¹ "ut" omitted, MS. Rawl. C. 160. | ² "inter talem querentem," MS. id.

the principal claimant, and whether the claimant or his warrantor has essoined himself, let him always be exacted, who has not essoined himself.

CHAPTER VI.

And that essoins for sickness on the way may be thereupon judged, in the first place the original writs are to be inspected chiefly if it be a new suit, or the judicial writs if it be a new suit, that it may be thereby known whether an essoin will lie or not. But if it be a new suit and the writ has come, then let mention be made on the margin [of the roll] that it is a new suit. But if the writ has not come, in the same manner let mention be made in the margin that the writ has not come, but let the essoin be allowed, if the claimant has come, and let it be said to him, that he should produce his writ on another day through another writ directed to the viscount.

1.
How an
essoins of
sickness by
the way is
judged.

f. 348 b.

The king to the viscount greeting. We enjoin you that you cause to come before our justiciaries &c. our writ, which came to you concerning a suit, which is summoned in our court before our justiciaries &c. between so-and-so as claimant and so-and-so as tenant, concerning so much land with its appurtenances in such a vill, or otherwise: our writ which came to you about summoning so-and-so, that he should present himself before &c. to answer to such a woman concerning her dower, which belongs to her from a free tenement, which was so-and-so's her late husband's &c., or otherwise: between such a plaintiff and so-and-so about attaching so-and-so concerning such a suit, and so that there shall always be in such a writ mention of the original writ, of what character it was, and then thus; and do thou thyself be there then, in order to hear thy judgment on the circumstance, that thou didst not send that writ to the aforesaid justiciaries by such a day, as had been enjoined

2.
If the
original
writ has
not come,
a writ to
the vis-
count that
he cause
another
writ to
come.

sicut praeceptum tibi fuit. Et habeas ibi hoc breve simul cum alio brevi. Teste &c. Si autem placitum vetus fuerit, q quidē erit post primum essonium, tunc eodem modo fiat mentio in margine q vetus est, et eodem modo si vetus, et resūmonitum est, et tunc inspiciantur rotuli tam de placitis quā de essoniis, ut sciri possit qualiter partes ultimo die litis à curia recesserunt, et per hoc perpendi poterit de facili quibus competat essonium, et quibus non, et si plures contineantur in brevi, quorum quidam se essoniaverint, et quidam non, fiat mentio in margine sic: Alius vel alii. Item si warrantus vel juratores vel recognitores, fiat mentio in margine sic: Exigatur warrantus vel exigantur juratores. Et eodem modo de omnibus fiat mentio quos tangit negotium, et quorum praesentia fuerit necessaria, et si vir essoniatus fuerit, fiat mentio super essonium sic: quod habet uxorem et è converso, et qui si praesentes fuerint, habeant eundem diem; si autem defaultam fecerint, pcedatur contra eos sicut inferiūs dicitur de defaultis. Si autem tenens se essoniaverit et petens non venerit nec breve infra quartum diem, tunc dicatur essoniatori quod eat sicut venit, et judicialiter non absolvitur ab observatione iudicii. Justic. autē ex quo warrātum non habent nec breve, nihil statuere possunt cōtra absentē, et si postmodū breve venerit, & dies suūmonitionis non pterierit, ad diem illum procedi poterit ad defaultam, vel quamvis dies preterierit, de gratia justic. poterit loquela resuscitari, ut de termino S. Trinitatis anno regni regis H. decimotertio in itinere Midd. circa finem rotuli. Si

to thee, and produce there this writ together with the other writ. Witness &c. But if the suit be an old one, which it will be after the first essoin, then in the same manner let mention be made in the margin that it is old, and in the same way if it is old and has been re-summoned, and then let the rolls be inspected as well concerning the pleas as concerning the essoins, that it may be known in what manner the parties retired from the court on the last day of the suit, and thereby it may be understood easily who are entitled to an essoin, and who not so, and if several persons are contained in the writ, of whom some have essoined themselves, and some not, let mention be made in the margin thus: Another or others. Likewise if a warrantor or jurors or recognisors, let mention be made in the margin thus: Let the warrantor be exacted, or let the jurors be exacted. And in the same manner let mention be made of all persons, whom the business touches and whose presence will be necessary, and if a man has been essoined, let mention be made upon his essoin that he has a wife and the converse, and if they be present, let them have the same day given to them; but if they have made default, let proceedings be had against them as shall be described below in treating about defaults. But if the tenant has essoined himself, and the claimant has not come nor the writ within the fourth day, then let it be said to the essoiner, that he may go away as he came, and judicially he is not absolved from the observance of the judgment. But the justiciaries, since they have neither a warrantor nor a writ, can decide nothing against an absent person, and if the writ should come afterwards, and the day of the summons has not passed, up to that day proceedings may be had for a default, or, although the day has passed, by the favour of the justiciaries the cause may be revived, as in Holy Trinity term in the thirteenth year of the reign of king Henry in the Middlesex iter, about the end of the roll. But if the writ has come

autē breve venerit, et non petens, et tenens se essoni-
averit, essoniatore tenentis quarto die se liti offerente
pro dño suo, essoniator judicialiter quietus recedet de
brevi illo, petens in misericordia, et sic fiat irrotulatio.
Talis essoniator talis optulit se quarto die versus talē,
de tali placito, et ille nō venit, et fuit petens, et ideo
essoniator sine die. Si autē dies advenerit suṁmonitio-
nis & neuter ipsorū cōparuerit, & breve venerit, tunc
de gratia post intervallū admitti potest essoniū petē-
tis, ad salvandū breve suū et diē suṁmonitionis. Vel
pcedi possit ad defaltā, quia hoc fit ad nullius p̄judiciū,
& tenens sibi imputet quòd defaltā fecerit, quia si
cōparuisset, posset recessisse quietus p̄ iudicium. Et
f. 349. ubi jaceat essoniū de malo veniendi, & ubi non, satis
ppendi poterit ex præmissis. Essonia vero de Terra
Sancta, & de ultra mare, & de servitio dñi regis, qua-
liacunq̄ non pveniunt ex natura breviū, sed à casu
fortuitu & ab eventu, & ideo non sunt secundum
naturam brevium judicanda.

CAP. VII.

1.
Qualiter
irrotulatur
essonium
de malo
lecti.

Sunt etiam duo brevia (secundum q̄ supradictū est),
à quibus duo pcedūt essonia, s. de malo veniendi &
de malo lecti, & semper sequitur essoniū de malo lecti
essonium q̄ pcedit de malo veniendi, & quandoq̄ imē-
diatè, & quandoq̄ non imēdiatè, ut si interveniat esso-

and not the plaintiff, and the tenant shall have essoined himself, the essoiner of the tenant on the fourth day offering himself to contest the suit on behalf of his principal, the essoiner shall withdraw judicially acquitted from that writ, the plaintiff shall be at the mercy of the crown, and let there be an enrolment thus: So-and-so the essoiner of such a person has offered himself on the fourth day to contest the suit against such a person in such a suit, and he has not come, and he was the plaintiff, and therefore the essoiner is without a day. But if the day of the summons has arrived and neither of them has appeared, and the writ has come, then the essoin of the plaintiff may of grace be admitted after an interval, to save his writ and the day of the summons. Or proceedings may be had for a default, because this is done without prejudice to anybody, and let the tenant impute to himself the fact that he has made default, because if he had appeared, he might have gone away acquitted by a judgment. And where an essoin of sickness by the way will lie, and where not, may be sufficiently ascertained from the premises. But essoins concerning the Holy Land, or concerning absence beyond the sea, or concerning an engagement in the service of the lord the king of whatever character they may be, do not arise out of the nature of the writs, but from a fortuitous casualty or from an event, and therefore they are not to be judged according to the nature of the writs. f. 349.

CHAPTER VII.

But there are two writs (according to what has been said above), from which there proceed two essoins, to wit, concerning sickness by the way, and concerning bed-sickness, and an essoin of bed-sickness always follows an essoin which precedes it of sickness by the way, and sometimes immediately, and sometimes not immediately,

1.
How an
essoins for
bed-sick-
ness is
enrolled.

niū de servitio dñi regis, s. breve de recto de terra, & alia de recto super jus nominata,¹ & fieri debet essoniū de malo lecti tertio die inclusivo ante diem datū p essoniatorem in essonio de malo veniendi. Irrotulari autē debet sic, si unus sit petens & unus tenens, primò scribatur in margine nomen cōm, ubi essoniatus jacuerit, sive jacuerit in eodē cōm sive in alio, tunc sic. Talis apud talem locū in eodē cōm, vel si in alio cōm jacuerit, tunc sic. Apud talē locum ubi essoniatus jacuerit. Si autē plures sint ibi tenentes simul & p indiviso, omnes se essoniare possunt de malo lecti, simul & eodē die, si voluerint, & fiat irrotulatio de quolibet p se secundū formā primī essoniati, & secundū q essoniatus jacuerit in eodē cōm, ubi terra fuerit, vel in alio, & omnes poterūt habere lāguorē, vel quidā eorum, vel nullus, secundum q quatuor milites visores languorē judicaverint essoniato, vel non judicaverint. Et si omnibus simul judicaverint languorē vel quibusdā vel tantum uni, nō erit ibi nisi unicus languor ppter unitatē juris, q habent essoniati, & unde si omnes pter unum quocunq tempore post essonium de malo lecti licentiam habuerint surgēdi, et unus se tenuerit in languorē, & habuerit annum & diē, nullus de cætero essoniū habebit de malo lecti, quia omnes simul vel p quosdam ex eis vel p unum tantū languorē habuerint.

2. Adjungitur quandoq essonium de malo veniendi es-
Si adjunga-
tur essoni-
sonio de malo lecti ratione plurium, qui tenent in

¹ "superius nominata," MS. Rawl. C. 160.

as if an essoin for the service of the lord the king should intervene, to wit, a writ of right to land and other writs of right above named, and the essoin for bed-sickness ought to be made on the third day inclusive before the day given through an essoiner in an essoin for sickness in the way. But it ought to be enrolled thus, if there be one claimant and one tenant, first let there be written on the margin the name of the county, where the person essoined was lying, whether he was lying in the same county or in another, then thus : Such a person at such a place in the same county ; or if he is lying in another county then thus : at such a place where the person essoined is lying, But if there be several persons there tenants together and of an individual whole, all may essoin themselves for bed-sickness together and on the same day, if they wish, and let there be an enrolment of each by himself according to the form of the first person essoined, and according as the person essoined has lain in the same county where the land is, or in another, and they may all have a languishing illness, or some of them, or none, according as the four knights the viewers have adjudged to the person essoined a languishing illness or have not adjudged so. And if they have adjudged to all at the same time a languishing illness, or to some of them, or only to one, there shall not be there any but a single languishing illness on account of the unity of right, which the persons essoined have, and hence if all on account of one person at any time of an essoin for bed-sickness have obtained a licence to get up from bed, and one has kept himself in a languishing state, and has had a year and a day, no one henceforth shall have an essoin for bed-sickness, because all have had an essoin for a languishing illness together, or in the case of some of them, or in the case of one only.

Sometimes an essoin of sickness by the way is added ^{2.}
to an essoin of bed-sickness in regard of several persons ^{If an essoin for sick-}

um de malo veniendi
essonio de malo lecti. cōmuni & vicissim se essoniaverint, & tunc cōsequenter post essoniū de malo lecti irrotuletur essoniū de malo veniēdi in forma cōmuni. Et q de uno dicitur tali, de pluribus qui essoniaverint de malo veniendi intelligat. Si autē quidam ex pluribus se essoniaverint de malo lecti, et quidā cōparuerit,¹ cū nō sint essoniati de malo veniendi, eundē habent diē quē habet essoniatus, si ei malū transiens adjudicatur simul cū petēte. Ad qm diē si nō venerit essoniatus, nec milites qui eum viderunt, habebunt aliū diē. Itē esto q secundo die ante diē datā p essoniatōrē, in essonio de malo veniendi essoniaverit se tenens de malo lecti, jam erit tenens in defalta, si petens petat inde iudiciū, & multo fortius, si die placiti vel in crastino. Et de hac materia invenire poterit in rotulo de terñ S. Hill' añ regis H. septimo in crastino Puñ B. Mariæ, inter Vitalē Engayne & quendā de Ferclos de advocacione ecclesie de Ho. Et ad hoc facit de terñ S. Michaelis f. 349 b. anno regis ejusdem incipiente octavo, de eodem Vitali, nisi forte essoniatores ostenderint se fecisse essonium apud Turrin cum ptestatione & recordo cōstabularii, vel si essoniatus primo die litis venerit, & essoniatores deadvocaverit, q quidem facere poterit quocunque tempore antequā factum fuerit essoniū de malo lecti, cū autem justic. ad diem datum residentes non fuerint in Banco, semper apud Turrin faciendum erit essonium, & eodem modo in coñ apud castrum.

¹ "comparuerint," MS. Rawl. C. 160.

who hold in common and have essoined themselves in turns, and then consequently after an essoin of bed-sickness let an essoin of sickness by the way be enrolled in common form. And what is said of one person of this kind may be understood of several, who have essoined themselves for sickness by the way. But if some out of several have essoined themselves for bed-sickness, and some have appeared, since they have not been essoined for sickness on the way, they have the same day which the person essoined has, if an excuse for transient sickness has been adjudged to him together with the claimant. At which day if the person essoined has not appeared, nor the knights who have viewed him, they shall have another day. Likewise let it be, that on the second day before the day given through the essoiner in an essoin of sickness by the way the tenant has essoined himself for bed-sickness, the tenant will be already in default, if the claimant seeks judgment thereon, and much more so, if it be on the day of the plea or on the morrow. And on this matter a case will be found in St. Hilary term in the seventh year of king Henry on the morrow of the Purification of the blessed Virgin, between Vitalis Engayne and a certain de Ferclos, concerning the advowson of the church of Ho. And this is supported by a case in St. Michael's term at the commencement of the eighth year of the reign of the same king concerning the same Vitalis, unless by chance the essoiners have shown that they have made an essoin at the Tower with a protest and a record of the constable, or the person essoined has come on the first day of the trial, and has disavowed the essoiners, which he will be able to do at any time before an essoin of bed-sickness has been made, but when on the given day the justiciaries have not been resident at the bench, the essoin will always have to be made at the Tower, and in the same way in a county at the castle.

ness on the way be added to an essoin for bed-sickness.

f. 349 b.

CAP. VIII.

1.
In cujus
persona
non jacet
essonium
de malo
lecti.
Britton, vi.
ch. ix.

Item videamus in cujus persona non jaceat essonium de malo lecti, licet agatur p talia brevia ut pdictum est, nunquam enim jacebit in psona petentis, quamvis in hujusmodi placitis cōpetat ei essonium de malo veniendi. Item nec in psona alicujus attornati, si tenens forte attornatum fecerit unū vel plures, quia quamvis attornatus languidus sit, & de facto se esso- niet de malo lecti, responsalem mittere non poterit, nō magis quā facere attornatum, nisi alium mittere possit nuntiū, cūm nullum ei cōpetat essonium, ad ex- cusationem usq̄ ad quartum diem ppter alicujus impe- dimentum eventum, ut si ab hostibus vel adversariis detentus fuerit in vinculis, vel impeditus, sed quid si attornatus languidus fuerit, excusari eodem modo debet (ut videtur), sed non nisi usq̄ ad quartum diem. Quis enim magis vinculis aretatur quā ille qui lāgudus est & graviter infirmatus. Itē nunquā jacebit in psona warranti, nisi tunc demū postquā p̄sens in judicio warrantizaverit, &c. ita q effectus fuerit dominus litis: ut de termino S. Michaelis aū regis H. septimo inter essonia in comitatu Sussex de Alano de S. Georgio. Item nō pderit essoniato essonium de malo lecti quin pcedatur ad defaltā, qui se sic essoniavit, q jaceat extra potestatem domini regis ubi brevia sua non currunt nec returna, sive hoc fuerit in regno sive extra, & licet prima facie jaceat essonium, exequi tamen nō poterit ppter defectum. Item non jacet in persona alicujus nec in placito, ubi quis semel habuerit lan- guorem, sive tenens principalis sit sive warrantus, non

CHAPTER VIII.

Likewise let us see in whose person an essoin of bed-sickness does not lie, although the action is brought through such writs as described above, for it will never lie in the person of the claimant, although in such writs he is entitled to an essoin of sickness on the way. Likewise not in the person of an attorney, if the tenant has perchance appointed an attorney, one or more, because although he may have a languishing illness and in fact has essoined himself for bed-sickness, he cannot send a representative, no more than constitute an attorney, except that he may send a messenger, since he is not entitled to an essoin, to make excuse for him up to the fourth day, on account of the accident of some impediment, as if he has been detained in chains or has been impeded by enemies or by adversaries, but what if the attorney has a languishing illness? he ought to be excused in the same way (as it seems), but not longer than up to the fourth day. For who is more fettered by chains than he who is languid and grievously infirm. Likewise it will never lie in the person of a warrantor, unless then at length, after being present before the judges he has warranted &c. so that he has become lord of the suit, as in St. Michael's term in the seventh year of king Henry, amongst the essoins in the county of Sussex, concerning Alan de Saint George. Likewise an essoin of bed-sickness will not profit an essoince so as to prevent proceedings being had for a default, in the case of him who has thus essoined himself, that he lies beyond the power of the lord the king, where his writs and the returns to them do not run, whether this be within the realm or beyond it, and although at first glance the essoin would lie, it cannot be executed on account of the defect. Likewise it does not lie in the person of any one nor in a plea, where a person has once had an essoin for languor, whether he be a principal tenant or his warrantor, I do

1.
In whose
person an
essoin of
bed-sick-
ness does
not lie.

dico q quis languorem habuerit antequam fuerit adjudicatus, & dies datus apud Turrin, & postea visus coram justic. testatus, ita q non surrexerit ante annum & diem, quod si aliquo casu fecerit, non dicetur habuisse languorem. Item in comitatu ubi justic. fuerint itinerantes nō jacet essonium de malo lecti in psona ejus, qui se fecerit essoniari infra coñ de tenemento q fuerit in comitatu, quia facere poterit attornatum. Si autē extra coñ nō sit, sive placita fuerint forinseca sive intrinseca, dum tamen tenens se essoniaverit extra coñ. Item non jacet essoniū de malo lecti in aliqua causa psonali, criminali vel civili. Item nō jacet essonium aliquando in principio litis nisi post tempus, cū res de qua agitur fuerit specificata, sicut in placito & breve de divisio. In brevi de serviciis & consuetudinibus, in brevi quo jure quis petat coñuniam pasturæ non jacebit essonium de malo lecti, antequam
 f. 350. res quæ petitur fuerit designata & tenens se defenderit p duellū, vel se posuerit in magnam assisam. Item non jacet essonium de malo lecti ab initio ad breve de ingressu, nisi tunc demū cū per narrationē vertatur ad breve de recto, & cū tenens posuerit se in magnā assisam, vel se defenderit p duellū. Itē ab initio jacet essonium de malo lecti & competit tenenti, & postmodum desinit cōpetere, ut si quis ab initio petere inceperit p breve de recto, & post narrationē descensus descendat ad ingressum, & ubi breve de recto vertitur in breve de ingressu ut supra. Sed contra de termino S. Michaelis anno regni regis H. sexto in

not say that a person has an essoin for languor before it has been adjudged to him and a day given to him at the Tower, and he has been afterwards viewed, and it has been before the justicaries testified that he has not risen from his bed before a year and a day, which if he should have by any chance done, he will not be said to have had a languor. Likewise in the county, where the justicaries are on circuit, an essoin for bed-sickness does not lie in the person of him, who has caused himself to be essoined within the county concerning a tenement which was in the county, because he could have constituted an attorney. But if he be not beyond the county, whether the pleas be foreign or domestic, provided however the tenant has essoined himself beyond the county. Likewise an essoin for bed-sickness does not lie in any personal suit, criminal or civil. Likewise an essoin sometimes does not lie at the commencement of a suit, unless after a time, when the thing concerning which the action is brought has been specified, as in a plea and a writ concerning partitions. In a writ concerning services and customs, in a writ of *quo jure* as to a claim for common of pasture, an essoin for bed-sickness will not lie, before the thing, which is claimed, has been designated f. 350. and the tenant has defended himself by a duel, or has put himself upon a great assise. Likewise an essoin does not lie for bed-sickness at the commencement upon a writ of entry, except then indeed when by the counting it is turned into a writ of right, and when the tenant has put himself upon a great assise or has defended himself by a duel. Likewise an essoin for bed-sickness lies from the commencement, and the tenant is entitled to it, and he afterwards ceases to be entitled to it, as for instance if a person in the commencement has begun to claim by a writ of right, and after the counting the descent descends to an entry, and where a writ of right is turned into a writ of entry as above. But on the contrary in St. Michael's term in the sixth year of the reign of

comitatu Devoū inter essonia de banco, inter Matildam de Curtney petentē & Robertū de Courtney tenentē, quia ibi dicitur q̄ essoniū de malo lecti allocatur cū loquela fuerit super judiciū. Itē in eodē in essonio de malo lecti q̄ allocandum erit postq̄m dies datus fuerit de audienda electione, ut inter Galfridū de Lucy in cōm Sussex. Itē in eodē cōm Sussex de priore de Blibing, q̄ non jacet ad breve quo jure. Itē in eodē q̄ non jacet ubi non fuit factū tertio die ante diē placiti in comitatu Gloc. de Roberto Toniguy.¹ Itē in eodē cōm Sussex de Philippo de Redham, q̄ non jacet de pte sororis p̄ novum breve. Itē de termino P. aū regis H. decimoquarto in cōm Buck. q̄ nō jacet de fine facto. Itē desinit essoniū de malo lecti cōpetere, ut si p̄ breve de recto pveniatur ad iudicium, & fuerit ex utraq̄ pte cōclusum, & remanserit loquela sup̄ judiciū, & non habuerit aliqua pars ulterius quid pponat, licet judiciū de loco in locum, cū loquela jam de toto sit determinata, cū nō sit aliquis qui dicere possit q̄ recordū loquelæ quæ est sed q̄ fuit, secus tamē est si loquela terminata nō fuerit. Itē (secundū quosdā) in psona minoris non jacet essoniū de malo lecti, q̄ quidem verū est, nō magis qm de malo veniēdi in causa possessionis nec in causa pprietatis, quia ad causā pprietatis infra ætatē nō respōdebit, nisi ita sit q̄ infra ætatē feoffatus sit, & quo casu, cū respondere teneatur, habebit omnia reme-

¹ "Tonynguy," MS. Rawl. C. 160.

king Henry in the county of Devon, amongst the essoins of the Bench, between Matilda de Curtney the claimant, and Robert de Courtney the tenant, because it is there said that an essoin for bed-sickness is allowed when the argument is about the judgment. Likewise in the same year concerning an essoin of bed-sickness which will have to be allowed after a day has been given for hearing an election, as between Godfrey de Lucy in the county of Sussex. Likewise in the same county of Sussex concerning the prior of Blibing, that it does not lie in the case of a writ *quo jure*. Likewise in the same that it does not lie where it has not been made on the third day before the day of the plea, in the county of Gloucester concerning Robert Toniguy. Likewise in the same county of Sussex concerning Philip de Redham, that it does not lie on the part of a sister through a new writ. Likewise in Easter term in the fourteenth year of king Henry in the county of Bucks, that it does not lie concerning a fine which has been made. Likewise a person ceases to be entitled to an essoin for bed-sickness, as in the case where through a writ of right one has arrived at a judgment, and it has been concluded on either side, and the argument upon the judgment remains, and neither party has anything more to propound, although the judgment be from place to place, when the argument has been totally determined, when there is not any one who can speak of the record of the argument as pending, but as having been pending, it is otherwise however if the argument has not been terminated. Likewise (according to some) an essoin for bed-sickness does not lie in the person of a minor, which indeed is true, no more than an essoin for sickness on the way, in a cause of possession or in a cause of property, because in a cause of property he shall not answer, whilst he is under age, unless it be that he has been enfeoffed whilst under age, and in which case, as he is bound to answer, he shall have all the remedies

dia q̄ haberet quilibet major, ne sit deterioris cōditionis ppter aetate, licet essoniū de malo lecti & de malo veniendi warrātizare nō possit, nec jurare nec in essoniū de malo lecti respōsalem mittere, poterit hæc omnia facere p̄ custodē, cū tutore autore. Itē nō jacet essoniū de malo lecti in psona warrāti pendēte placito de warrātia, anteqm warrantus warrantizaverit. Itē nō jacet ubi priūs se nō essoniaverit de malo veniendi, sed vertitur in essoniū de malo veniēdi. Item nō jacet ubi tenēs se essoniavit in villa de Lond, quia mitti potest ibi ad capiēdū attornatū, ut in cōm Buck. de Hugone de Brock, & ita videtur q̄ corā justic. itinerātibus fieri debet idē si fuerit essoniatus in comitatu in quo itineraverint, secūs si extra. Itē nō jacet in b̄ri quo warrāto. Itē nō jacet in psona attornati, ut si vir & uxor implacitati fuerint, vel p̄cipes, vel duo extranei simul, vel in diversis placitis, quorum unus fuerit attornatus alterius, licet jaceat in psona unius in psona¹ pprii placiti, tamen non jacet in psona ejusdem de alio placito, quia est attornatus. Itē non jacet ubi tertio die ante placitū cum² fuerit essoniatus. Item non jacet quia petens, sed exigantur plegii petentis propter defaltam. Itē non jacet de pparte sororum. Itē non jacet in assisa ultima p̄sentationis quæ remansit ppter aetate, & resūmonitio est in tali statu. Itē si quis essoniatus fuerit de malo lecti & petens non cōparuerit ante tertium diem placiti, allocabitur defalta ad alium diē, cū essoniatores petant judicium de defalta. Itē idē erit si tenens

f. 350 b.

¹ "in persona unius ratione proprii placiti," MS. Rawl. C. 160. | ² "cum," omitted, MS. id.

which a major would have, lest he be in a worse condition on account of his age, although he cannot warrant an essoin for bed-sickness or for sickness on the way, nor take an oath, nor send a person to answer for him in an essoin of bed-sickness, he may do all these things through a guardian, with a tutor's authority. Likewise an essoin of bed-sickness does not lie in the person of a warrantor pending a suit concerning a warranty before the warrantor has warranted. Likewise it does not lie where a person has not previously essoined himself for sickness on the way, but it is turned into an essoin of sickness on the way. Likewise it does not lie where a person has essoined himself in the vill of London, because he could have been sent there to take an attorney, as in the county of Bucks concerning Hugh de Brock, and so it seems that it ought to be done before the justices itinerant, if a person has been essoined in the county in which they are itinerant, otherwise if beyond it. Likewise it does not lie in a writ of *quo warranto*. Likewise it does not lie in the person of an attorney, as if the husband and wife have been impleaded, or parceners, or two strangers in blood together, or in different suits, of whom one has been the attorney of the other, although it would lie in the person of one in regard of his own suit, nevertheless it does not lie in the person of the same concerning the other suit, because he is an attorney. Likewise it does not lie when on the third day before the suit he has been essoined. Likewise it does not lie because he is the plaintiff, but let the sureties of the plaintiff be exacted on account of his default. Likewise it does not lie in a suit of partition between sisters. Likewise it does not lie in an assise of last presentation which has been stayed on account of age, and the resumption is in such a state. Likewise if a person has been essoined for bed-sickness and the plaintiff has not appeared before the third day of the plea, a default shall be allowed for another day, when the essoiners claim judgment by default. Likewise it shall be the same if

f. 350 b

tertio die se essoniaverit de malo veniendi. Itē non jacet de placito cōventionis. Itē nec de placito quo jure. Itē nec de placito finis facti. Itē si vir & uxor advocati¹ fuerint ad warrantū, si tenens principalis se essoniaverit de malo veniendi vel de malo lecti, antequam vir & uxor warrantizaverit, exigantur warrāti, & si vir mortuus fuerit, de novo sumōneatur uxor q per se sit ad warrantizandum. Si autē uxor prēmoriatur vel ambo, tunc sumōneantur hæredes. Itē nō jacet de ingressu ad terminū, vel cui uxor cōtradecere non potuit, vel de aliquo ingressu, nisi fuerit longinquus, videlicet, ubi breve de ingressu vertitur in breve de recto per electionē tenentis: ut de termino S. Michaelis anno regni regis H. septimo incipiente octavo in comitatu North., de Henry de Gayton versus priorem S. Johannis de North. Itē in eo q non jacet essoniū de malo lecti, ubi non præcessit essonium de malo veniendi, sed vertitur in essoniū de malo veniendi, in comitatu Devon de Alicia Malet. Item in eodē comitatu Buck. de Hugone de Broke, q non jacet in villa de Londō non magis quā in comitatu, quia potest essoniatus attornatum facere per quatuor milites. Itē cadit breve & essonium nō jacet ubi nō dirigitur breve de recto ad primum essonium de malo lecti, ut in comitatu Lanc. de Alic. de Lanc. & W. de Taham, Item nō jacet quia de dote, sive p breve de recto de dote, sive per breve de dote. Itē nō jacet in placito ubi languor prius fuit adjudicatus. Itē nec in placito de escābio faciendo vel nūr capiendo.² Item nec in placito q quis pmittat p̄sentare, sed pcedatur ad defaltā

Britton, vi.
ch. x. § 3.

¹ "vocati fuerint," MS. Rawl. C. 160.

² "vel cyrograffo capiendo," MS. id.

the tenant on the third day shall have essoined himself for sickness on the way. Likewise it does not lie in a suit respecting an agreement. Likewise not in a suit of *quo jure*. Likewise not in a suit respecting a fine levied. Likewise if husband and wife have been called to warrant, if the tenant principal has essoined himself for sickness on the way or for bed-sickness, before the husband and wife have warranted, let their warranties be exacted, and if the husband has died, let the wife be summoned afresh that she appear alone to warrant. But if the wife has pre-deceased or both, let the heirs in such case be summoned. Likewise it does not lie concerning an entry for a term, or one which a wife cannot contradict, or concerning any entry, unless it has been remote, for instance, where a writ of entry has been turned into a writ of right by the election of the tenant, as in St. Michael's term in the seventh and eighth years of the reign of king Henry in the county of Northampton, concerning Henry de Gayton against the prior of St. John at Northampton. Likewise in the case when an essoin of bed-sickness does not lie where an essoin of sickness in the way has not preceded, but it is turned into an essoin of sickness by the way, in the county of Devon concerning Alice Malet. Likewise in the same county of Bucks concerning Hugh de Broke, that it does not lie in the vill of London no more than in a county, because the person essoined may make an attorney through the four knights. Likewise the writ falls and an essoin does not lie where a writ of right is not directed to the first essoin of bed-sickness, as in the county of Lancaster concerning Alice of Lancaster and William de Taham. Likewise it does not lie because it is concerning dower, whether it be by a writ of right concerning dower, or by a writ of dower. Likewise it does not lie in a suit where languor has been previously adjudged. Likewise not in suits concerning the making of an exchange or the taking of a chirograph. Likewise not in a suit that a person should permit a presentation, but let proceedings

Et illud idem fiat in placito de servitiis & cōsuetudinibus. Et q̄ ad breve de ingressu non jaceat, de termino Sancti Michaelis anno regni regis H. sexto in comitatu Noŕ de Emma de Bella Fago, quia ibi dicitur q̄ breve de ingressu æquipollet brevi assisæ mortis antecessoris.

2.
Qualiter
essonium
de malo
lecti judi-
candum sit.

Essonia de malo lecti judicantur ita, s. quod primo inspicienda sunt brevia originalia de recto, & si in suo statu remanserint vel per narrationem incepterint esse alterius naturæ, & desierint esse brevia de recto, vel si ab initio nō fuerint brevia de recto & p̄ narrationem incepterint esse ut p̄dictum est, vel p̄ specificationem. Item si plures sint ibi tenentes participes & p̄ indiviso, fiat de omnibus mentio. Eodem modo de warranto vocato. Itē si plures sint ibi participes, & plures dies p̄terierint & plura essonia, videndum erit quid actum fuit ad quemlibet diem, per inspectionem rotulorum, tam de essoniis, quàm de placitis, ut sciri poterit quis habuerit essonia & quot & quis non. Item videre oportet quòd lāguor non præcesserit. Item videri poterit quòd ille qui se essoniavit de malo lecti prius habuerit essonium de malo veniendi. Sed esto q̄ quis se essoniavit de malo lecti, cū se essoniasse debuerit de malo veniendi, in utroquē casu vertitur in essonium de malo veniendi cū utrumque competat, sed suo ordine, et qui facit id q̄ majus est, facit id q̄ minus est, sed non ē contrariò. Si quis se essoniaverit de malo veniendi cū se essoniasse deberet de malo

f. 351.

be had to a default. And let the same thing be done in a suit concerning services and customs. Likewise that it does not lie in a writ of entry, you have a case in St. Michael's term in the sixth year of the reign of king Henry in the county of Nottingham, concerning Emma of the Beautiful Beech Tree, because it is there said that a writ of entry is equivalent to a writ of mortdancer.

Essoins of bed-sickness are thus judged. That in the first place the original writs of right are to be inspected, and if they have remained in their own nature or through the counting have begun to be of another nature, and have ceased to be writs of right, or from the beginning they have not been writs of right, and through the counting have begun to be as aforesaid, or through the specification. Likewise if there be several there tenant co-parceners, and for the whole estate, let mention be made of all. In the same way concerning the vouching a warrantor. Likewise if there be several co-parceners, and several days and several essoins have passed, it will have to be seen what has been done on each day, by an inspection of the rolls, as well concerning the essoins as concerning the pleas, that it may be known who has had essoins, and how many, and who not. Likewise it is incumbent to see that languor has not preceded. Likewise it is incumbent that it should be seen that he who has essoined himself for bed-sickness has previously had an essoin for sickness on the way. But let it be that a person has essoined himself for bed-sickness, when he ought to have essoined himself for sickness by the way, in each case it is turned into an essoin for sickness by the way when he is entitled to both, but in their proper order, and he who does that which is the greater, does that which is the less, but not the converse. If any one has essoined himself for sickness by the way, when he ought to have essoined himself for bed-sickness, it does not avail nor

2.
In what way an essoin of bed-sickness is to be judged.

f. 351.

lecti, non valet nec excusat non venientē. Et eodem modo (ut videtur) si quis se essoniaverit de Terra Sancta vel de ultra mare cum se essoniasse debuerit de malo veniendi, vertitur essoniū de ultra mare in essoniū de malo veniendi, cū cōpetierit. Itē esto q quis se essoniaverit de Ibernia quasi de ultra mare, attornatur essoniū illud ad simplex essonium de malo veniendi, ut corā M. de P. in banco anno regis Henrici sexto de Gilberto Marescallo & Cecilia uxore ejus, & Allanū de Hyda qui vocavit ad warrantum Wilhelmum Marescallum in cōm Pembroke, et qui se essoniavit de Ibernia, & non fuit allocatum, et postea fecit de hoc q aliud essonium de malo veniēdi ad alium diem non fuit allocatum.

CAP. IX.

1.
Qualiter
redduntur
essonia de
malo lecti
et de malo
veniendi
per or-
dinem.

Judicatis igitur essoniis tam de malo veniendi qm de malo lecti, primò reddantur essonia de malo lecti, hoc modo, & ideo prius redduntur, quia prius capiuntur. Sed si essonium de malo veniendi essonio de malo lecti adjungatur, essoniū de malo veniendi prius reddatur, et vocetur essoniator, & reddatur essonium, sive pars tenens se essoniaverit sive ipse petens. Et si petens et pars tenens simul de malo veniendi, dicatur essoniatori petentis q expectet quartum diē, si quidē quidā forte defaltā fecerit, et breve de videndo infirmum, sicut expectaret dominus ejus, & postea reddatur essoniū de malo lecti, ita q si breve fuerit de

excuse his not coming. And in the same way (as it seems) if any one has essoined himself for absence in the Holy Land, or for absence beyond the sea, when he ought to have essoined himself for sickness by the way, the essoin of "ultra mare" is turned into an essoin of sickness by the way, when it is available. Likewise let it be that a person has essoined himself for absence in Ireland as if for absence beyond the sea, that essoin, is attorned to a simple essoin of sickness by the way, as before Martin de Pateshull in banco, in the sixth year of king Henry, concerning Gilbert Marshall and Cecilia his wife, and Allan de Hyda who called as a warrantor William Marshall in the county of Pembroke, and who essoined himself for absence in Ireland, and it was not allowed, and he afterwards did therewith that another essoin for sickness on the way was not allowed to another day.

CHAPTER IX.

Upon the essoins as well of sickness on the way as of bed-sickness having been judged, in the first place let the essoins of bed-sickness be returned in this manner, and they are returned first for this reason, that they are taken first. But if an essoin for sickness on the way is added to an essoin for bed-sickness, let the essoin for sickness by the way be first returned, and let the essoiner be called, and let the essoin be returned whether the party holding or the party claiming has essoined himself. And if the claimant and the party holding have essoined themselves together for sickness on the way, let it be said to the essoiner of the claimant that he should await the fourth day, if indeed some one by chance shall make default, and a writ for viewing the sick person, just as his principal would have awaited, and afterwards let the essoin for bed-sickness be returned, so that if there should be a close writ of right,

1.
How es-
soins of
bed-sick-
ness and of
sickness by
the way
are re-
turned in
order.

recto clausum, sive ꝑcipe in capite, q̄ iṃmediate porrigitur vicecomiti, & mittitur ad bancum, si essonium jaceat, ita reddatur. Primò exigantur essoniatore, secundò exigatur petens, vel ejus essoniator: et tunc si omnes ꝑsentes fuerint, incōtinenti ita reddatur. Dicatur publicè essoniatoribus q̄ eant domum, & sic manifestum est q̄ non sunt essoniatores sed nuntii, qui nullum recipiūt diē, et postea dicatur: & tu petens N. vel essoniator, habebis breve de faciendo videre eum. Et si hoc fuerit malum transiens, ad talē terminum, vel talē diē certū. Et sic manifestum est q̄ petens recipit certū diē, scilicet cōmunem, ut tunc veniat & sequatur. De anno & die apud Turrim in Lond̄ non fiat aliqua mētio: sed adhuc in pendentī est, utrum adjudicari debet languor vel non, & ad visores pertinet q̄ ei dent diē, postquā ipsum viderunt, à die visus sui in unum annum & unum diē apud Turrim Lond̄. Si autē bře de recto apertum fuerit, & translata fuerit loquela ad magnā curiā à comitatu, & q̄ semper remanet penes petentē: Inprimis exigendū erit bře de recto, scilicet ad secundum diem, dum placitum fuerit novum, & sufficit (quantum ad omnia essonia subsequētia) q̄ semel ostendatur, & cūm ostensum fuerit & lectum, reddatur essoniū. Et si petens illud ad manū non habuerit, non reddatur essoniū donec fuerit ostensum, & si infra quartū diem illud nō ostenderit, ꝑcedatur ad defaltam cōtra ipsum petentē, et essoniatores per judiciū recedent sine die: ut in rotulo de termino S. Trinitat̄ añ regis Henrici decimoquinto in cōm Wigoriū de Adā de Thornmarton; & ita fiat irrotulatio, cūm essoniatores se optulerint versus petentē quarto die:

f. 351 b.

or a *præcipe in capite*, which is immediately handed to the viscount and is sent to the bench, if the essoin should lie, let it be thus returned. First let the essoiners be called, secondly let the claimant or his essoiner be called, and then if all should be present, let it forthwith be thus returned. Let it be said publicly to the essoiners that they may go home, and so it is manifest that they are not essoiners, but messengers, who receive no day, and afterwards let it be said, "and thou the claimant N. or his essoiner shall have a writ for causing him to be viewed." And if it be for a transient illness, "for such a term," or "to such a fixed day." And so it is manifest that the claimant receives a certain day, to wit, a common day, that he should then come and sue. Concerning a year and a day at the Tower in London let there not be any mention: but it is still pending, whether languor or not shall be adjudged, and it appertains to the viewers that they should give him a day, after they have seen him, from the day of their view to one year and one day at the Tower of London. But if the writ of right has been open, and the argument has been transferred from the county court to the great court, and which always remains in the power of the claimant: in the first place let the writ of right be called for, to wit, for the second day, whilst the suit is new, and it is sufficient (as far as regards all subsequent essoins) that it should be once shown, and when it has been shown and read, let the essoin be returned. And f. 351 b. if the claimant has not that at hand, let the essoin not be returned until it has been shown, and if he has not shown it within the fourth day, let proceedings be had for a default against the claimant himself, and the essoiners by a judgment shall depart without a day: as in the roll of Holy Trinity term in the fifteenth year of king Henry in the county of Worcester, concerning Ada de Thornmarton. And thus let the enrolment take place, when the essoiners have presented themselves against the

Tales & tales essoniatores talis, optulerunt se quarto die versus talē, qui petiit versus talē tantā fram, sed talis petens venit, sed non habuit breve suum de recto, nec primo, nec secundo, nec tertio, nec quarto die, & ideo essoniatores sine die de brevi illo, & poterit esse ratio, quia forte ab initio nullum fuit breve impetratum, nec exhibitum in curia domini capitalis. In reddendo vero essonio de malo lecti, exigendi sunt omnes quos loquela tangit, vir si uxor fuerit essoniata, & è contrariò. Item participes, ut habeant eundem diem. Itē quatuor milites electores, vel duodecim milites ad faciendā magnā assisam electi, si in tantū sit pcessum. Item warrantus exigendus erit, donec warrantizaverit. Cū autem ita redditum fuerit essonium de malo lecti, statim habebit petens, vel ejus essoniator, breve de mittendo quatuor milites ad videndū essoniatum, & judicandū utrum infirmitas qua se essoniaverit languor sit, vel malum transiens, secundū q inferius dicitur.

2.
Qualiter
redduntur
essonia de
malo veni
endi.

Redduntur quidē hoc modo: Primò vocetur publicè essoniator sic: ubi est essoniator talis? postea, ubi est talis, scilicet contra quem factum est essonium, vel essoniator, si forte fuerit essoniatus? Et si ambo p̄sentes fuerint, affidabunt essoniatores de habendo warrantos suos, ad certum diem, cōtinentē in se ad minus spaciū quindecim dierum, & secūdum q dictum est de uno intelligatur de pluribus, si fuerint essoniati, p̄sentibus vero dabitur idē dies, & omnibus quos causa tetigerit. Si autē quidā eorū defaltā fecerint, dicatur petēti vel ejus essoniatori, q expectet quartū diē suum

claimant on the fourth day. So-and-so the essoiners of such a person have presented themselves on the fourth day against so-and-so, who claimed against such person so much land, but the said claimant came, but he had not his writ of right, neither on the first nor on the second nor on the third nor on the fourth day, and accordingly the essoiners were without a day concerning that writ, and there might be reason, because perhaps from the beginning there had been no writ sued out, nor exhibited in the court of the superior lord. But in returning an essoin of bed-sickness, all those are to be called whom the argument touches, the husband if the wife has been essoined, and the converse. Likewise coparceners that they may have the same day. Likewise the four knights the electors, or the twelve knights the elected, to make a great assise, if proceedings have gone so far. Likewise a warrantor will have to be called, until he has warranted. But when the essoin for bed-sickness has been so returned, the claimant or his essoiner shall have forthwith a writ to the said four knights to view the party essoined, and to judge whether the infirmity for which he has been essoined be a languishing disease or a transient illness, according to what will be said below.

They are returned in this manner. First let the essoiner be called publicly thus: where is such an essoiner? afterwards, where is so-and-so, to wit, against whom the essoin has been made? or his essoiner, if by chance he has been essoined? And if both are present, the essoiners shall pledge themselves to produce their warrantors on a certain day, comprising in itself at least the space of fifteen days, and according to what has been said of one person let it be understood concerning several, if they have been essoined, but to those present the same day shall be given, and to all whom the cause touches. But if some of them have made default, let it be said to the claimant or to his essoiner, that he should await the fourth day with regard to those who have

2.
In what
way essoins
for sickness
on the way
are re-
turned.

versus illos qui non venerunt, ut pcedatur ad defaltā, secundum q inferiūs dicetur de defaltis. In essonio vero reddendo (ut supra de essoniis de malo lecti) exigātur omnes illi quos causa tetigerit, sicut pteps, warrantus, & alii, ut supra, recognitores in assisis, juratores in juratis, inquisitores in inquisitionibus, milites in electionibus faciendis, vel milites in magnis assisis, ut habeant eundē diem, si p̄sentes fuerint, vel q attachientur omnes qui absentes fuerint, & si quidā illorum mortui fuerint, vel ut inutiles recusati, vel aliqua forte ratione excusati, loco ipsorum ponuntur alii per quos negotium melius possit expediri, & non cōtingit sēpius q tales habeant essonium aliquod, vel excusationem.

3. Non autē omnes essoniatores ad diem recipiendum
 Qui essoniatores affi-
 dabunt et
 qui plegios
 invenient, et
 de plegi-
 orum
 datione.
 Britton, l.
 vi. ch. vi.
 § 4.
- affidabunt, sed illi tantum, qui sunt baronibus inferioribus: barones vero & baronissæ, & eorum superiores, sicut comites, & eorum attornati, non affidabunt, sed plegios invenient. Martinus in banco anno septimo. Et si baro vel baronissa ad diem datum defaltam fecerit, sumoneantur plegii quōd sint ad alium diem ad audiendum iudicium suum, quare non habuerunt eum, sicut eum plegiaverunt. Ratio vero diversitatis hujus talis esse poterit (ut videtur) q ita nobiles & dignæ personæ in warrantizatione essonii nō per se jurabunt, sed per pcuratores, scilicet plegios suos. Itē nō est alicui concedendum, q in essonio alterius reddendo, diem recipiat petēs, maximē in absentia sua, vel sui attornati, vel sui essoniatoris, ppter inconueniens q sequi posset, quia si in absentia talium hæc fierent, & essoniator tenentis ante diem datū de essonio de malo veniendi à curia recederet, cūm partem ipsius tenentis
- f. 352.

not come, that proceedings may be had to a default, according to what will be said below concerning defaults. But in returning an essoin (as above concerning essoins for bed-sickness) let all those be called whom the cause will touch, such as a coparcener, a warrantor, and others, as above, recognisors in assises, jurymen in juries, inquisitors in inquests, knights in making elections, or knights in great assises, that they may have the same day, if they be present, or that they may all be attached who may be absent, and if some of them are dead or have been refused as useless, or excused by chance for some reason, others are put into their places by whom the business may be better expedited, and it does not happen repeatedly that such persons have some essoin or excusation.

But not all essoiners shall pledge themselves to accept a day, but only those, who are inferior to barons, but barons and baronesses and their superiors, such as counts and their attorneys, shall not pledge themselves, but shall find sureties. Martin de Pateshull in Banco, in the seventh year [of king Henry.] And if a baron or baroness on the given day have made default, let their sureties be summoned that they be present on another day to hear their judgment, wherefore they have not produced him as they pledged themselves to do. But the reason of this diversity may be of this character (as it seems), that persons of nobility and dignity in the warranting of their essoin should not swear by themselves, but by proctors, to wit their sureties. Likewise it is not to be conceded to any one that in returning the essoin of another person the claimant should receive a day chiefly in his own absence or in the absence of his attorney or of his essoiner, on account of the inconvenience which might follow, because if in the absence of such persons these things were done, and the essoiner of a tenant before the day given for an essoin of sickness on the way should retire from the court, when he

3.
What es-
soiners
shall
pledge
themselves,
and shall
find sure-
ties, and
concerning
the finding
of sureties.

f. 352.

defendere teneatur, si petens post diem acceptum se liti offeret, et iudicium de defalta peteret, dies ab eo acceptus, cuius non interesset, pro non accepto haberetur. Si autē ambo essoniatores tam petentis quā tenentis hoc fecerint, tūc de defalta non erit multum curandum, cū uterq̃ illorum sit in eadē causa, nec sit aliquid, vel quasi quid, q̃ Judæus Judæo possit imputare. Cū autē quis ita essoniatus fuerit de malo veniendi, & essoniator affidaverit, vel plegios invenerit de habendo eum ad diem datum p̃ ipsum, essoniator venire debet, & pducere dominum suum ad warrantizandum essonium, quod p̃ eo fecerit.

4.
Quid sit
warranti-
zare esso-
nium per
sacramen-
tum.

Est autem warrantizare, jurare quòd ita detentus fuit ægritudine in veniendo versus curiam, q̃ venire nō potuit p̃ lucrari nec p̃ perdere, & q̃ essonium fecit secundū legem terræ, quod quidem si ita fecerit, essonium suum warrantizabit. Si autem dominus principalis non venerit ad diem sibi datum per essoniatores suum, nec etiam essoniator, essoniator se excusare poterit (si voluerit) & dominum suum per essonium, quod venire non potuit nec dominum suum habere sicut affidavit, propter malum q̃ ei in itinere veniendo versus curiam supervenit. Sed quoniam, si de hujusmodi fieret inquisitio longa, fieri posset loquelæ protractio, non est de warrantizatione essonii multum curandum, quia nō vertitur in alicujus præjudicium nisi ipsius petentis, q̃ quidem est ei dissimulandum. Itē esto q̃ tenens postq̃m diem habuerit per essoniatores suum, & anteq̃m essoniū suum warrantizaverit, fecerit attorney, & ad diem petatur warrantia de essonio, quæritur quis facere debeat warrantiam? Et videtur q̃

is bound to defend the part of the tenant himself, if the claimant after the day accepted should present himself to join issue, and should claim judgment by default, the day accepted by him who had no interest in the matter would be held as not accepted. But if both the essoiners of the claimant as well as of the tenant have done this, then much care need not be taken concerning the default, since both of them are in the same cause, nor is there any thing or as it were any thing, which Jew might impute to Jew. But when a person has been so essoined for sickness by the way and the essoiner has pledged himself or has found sureties to present him on a day given through him, the essoiner ought to come and produce his principal to warrant the essoin, which he has made on his behalf.

But to warrant is to swear that he has been so detained by illness in coming towards the court, that he could not come to gain nor to lose, and that he had made an essoin according to the law of the land, which indeed if he has done so, he will warrant his essoin. But if the principal party has not come on the day given to him through his essoiner, nor even the essoiner, the essoiner may excuse himself (if he should wish) and his principal through an essoin, that he could not come nor produce his principal as he had pledged himself, on account of a misfortune which has come upon him in his way when coming to the court. But since, if there be an inquest into this matter, the prolongation of the trial might be long, much care is not to be taken concerning the warrantisation of an essoin, because it does not turn to the prejudice of any one except of the claimant himself, which indeed is to be dissembled to him. Likewise let it be that the tenant, after he has had a day through his essoiner, and before he has warranted his essoin, has made an attorney, and on the day a warranty of the essoin is claimed, it is asked who ought to make the warranty? And it seems that the

4.
What it is
to warrant
an essoin
by an oath.

warrantus nō, quia se nō essoniaverit. Oportet igitur q̄ tenens veniat, & warrantizet, alioquin non erit essonium warrantizatum. Et quamvis attornatum fecerit, non ppter hoc se excludit, quin veniat & se defendat cum possit & velit. Item si quis attornatū fecerit, qui se essoniaverit, ante diem datum per essonium suum ipsum amovere velit, & alium substituere, non erit hoc ei tutum, anteqm dies p̄terierit, q̄ warrantizatum sit essoniū, quia nec ipse tenens, nec attornatus amotus illud warrantizare possunt. Et hæc poterit esse ratio q̄ attornatus amoveri nō debet postqm fuerit essoniat, ut in psona principalis domini sequatur essonium de malo lecti. In essonio de malo veniendi datur dies multipliciter à justiciariis, quādoq̄ corā seipsis, quādoq̄ coram justiciariis itinerantibus, & corā se ipsis quādoq̄ purè, quādoq̄ sub distinctione, hoc est, corā se ipsis nisi justiciarii prius itineraverint in cōm, vel corā justitiariis purè ad certū diē vel incertum. In quibus casibus sequitur essonium coram justiciariis itinerantibus, vel non sequitur, secundum q̄ tales diem receperint corā justiciariis de banco, per se in banco, vel per essoniatore, eo excepto q̄ si diē ita ceperint incertum in bāco, ita vz. in advētū justiciariorum, oportet q̄ sequatur generalis suṃonitio, q̄ p̄cedat advētum justiciariorū p̄ quindenā vel āplius, ex qua suṃonitione sequi poterit essoniū de malo veniēdi, sicut in omnibus brevibus et assisis, q̄ īmediatè ponuntur à cancellaria in adventu justiciariorū. Si autē dies datus fuerit sic à justiciariis de banco corā justiciariis itinerantibus in

f. 352 b.

warrantor ought not, because he has not essoined himself. It is incumbent therefore that the tenant should come and should warrant, otherwise the essoin will not be warranted. And although he has made an attorney, he does not on that account exclude himself from coming and defending himself when he can and wishes so to do. Likewise if any one has made an attorney, who has essoined himself, and before the day given to him through his essoin he wishes to remove him, and to substitute another, this will not be safe for him, before the day has passed that his essoin should be warranted, because neither he himself, the tenant, nor the attorney who has been removed can warrant it. And this may be the reason why the attorney ought not to be removed after he has been essoined, that an essoin for bed-sickness may follow in the person of the principal. In an essoin for sickness on the way a day is given by the justiciaries in many ways, sometimes before themselves, sometimes before the justices itinerant and before themselves sometimes absolutely, sometimes with a distinction, that is, before themselves unless the justiciaries have previously made their *iter* in the county, or before the justiciaries absolutely on a certain day or an uncertain day. In which cases an essoin follows before the justices itinerant, or does not follow, according as such persons have had a day given to them before the justiciaries of the bench, through themselves in banco or through an essoiner, with this exception, that if they have had an uncertain day given to them in banco, thus, to wit, upon the coming of the justiciaries, it is incumbent that a general summons should follow, which should precede the coming of the justiciaries by fifteen days or more, from which summons there may follow an essoin for sickness on the way, as in all writs and assises, which are immediately appointed by the Chancery upon the coming of the justiciaries. But if a day has been thus given by the justiciaries of the bench before

f. 352 b.

itinere cūm itineraverint, tunc erit ut supradictū est. In itinere verò justiciariorū essonia in principio itineris, aliquādo de cōmuni sūmōnitione, aliquando de placito īræ, in quib⁹ casib⁹ habebūt essoniati diē rationabilē ad min⁹ quindenæ, sive īræ, q̄ petita fuerit, fuerit infra comitatū, vel extra, dum tamen extra, et visus petatur vel warrantus vocetur, erit quilibet dies certus et rationalis. Si autem terra fuerit infra cōm, cūm lites sint potius restringendæ, erunt in p̄dictis casibus induciæ arbitrariæ trium dierum, vel quatuor, vel amplius, secundum distantiam locorum in quibus terra fuerit quæ petitur.

5.
Si in die
dato erra-
tum fuerit,
quid sit
faciendum.

Cūm dies datus fuerit rationalis, sive in banco sive in itinere, & erratū fuerit forte in die dato, ita q̄ rotuli nō convenient sed discordent, ut si in uno rotulo cōtineatur q̄ dies datus fuit in quindecim dies, & in alio rotulo cōtineatur vel in pluribus, quòd in tres septimanas vel ulteriùs, semper p̄sumēdum erit de die, secundum q̄ in rotulo primo, s. p̄thonotarii, cujus irrotationē sequi debent ōnes alii rotuli subsequentes, & inde trahere originē & autoritatē. Et licet plures sint in contrarium, et cūm primus rotulus ita inducat p̄sumptionem vehementem cōtra alios, stari¹ poterit p̄sumptio, si recordum justiciariorum conveniat cum primo. Si autem dissentiat à primo & conveniat cum aliis, vincitur p̄sumptio de primo rotulo, & stabitur eorum recordo. Si autem ab omnibus rotulis discordet, fiat eodē modo, q̄ eorum stabitur recordo. Et quid si ipsi justiciarii inter se discordes fuerint? stabitur ma-

¹ "præstari," MS. Rawl. C. 160.

the justiciaries itinerant in their *iter*, when they are on circuit, then it shall be done as aforesaid. But on the circuit of the justiciaries there are essoins at the beginning of the circuit, sometimes upon a common summons, sometimes upon a suit for land, in which cases the essoinees shall have a reasonable day at least of a fortnight, whether the land which is claimed be within the county or without, provided however if it be without, and a view is claimed or a warrantor vouched, there shall be a certain and reasonable day. But if the land be within the county, since lawsuits are rather to be restrained, there shall be in the aforesaid cases truces at pleasure for three or four days or more, according to the distance of the places in which the land is, which is claimed.

When a reasonable day has been given, whether at the Bench or on the circuit, and there has been by chance an error as to the day given, so that the rolls do not agree, but are discordant, as if it should be contained in one roll that a day has been given at the end of a fortnight, and it be contained in another roll or in several rolls, that a day has been given at the end of three weeks or more, the presumption shall always be in favour of the day according to the first roll, to wit, that of the prothonotary, the enrolment of which all the other subsequent rolls ought to follow, and therefrom derive their origin and authority. And although there may be several to the contrary, since the first roll thus creates a vehement presumption against the others, the presumption may be abided by, if the record of the justiciaries agrees with the first roll. But if it differs from the first and agrees with the others, the presumption arising from the first roll is refuted, and their record shall be abided by. But if it should differ from all the other rolls, let it happen in the same manner that their record shall be abided by. And what if the justiciaries themselves are at variance with one another, the

5.
If there be
an error in
the day
given, what
is to be
done.

jori parti. Si autē æquales numero, tunc digniori cum p̄sumptione rotulorum. Si autem quilibet ab alio, p̄pter defectum p̄bationis habebitur ille dies p̄ non dato, & p̄cedat loquela de novo.

CAP. X.

1. Postquam essonia de malo lecti & malo veniendi
 Breve ad
 mittendum
 quatuor
 milites ad
 eum, qui
 essoniatus
 est de malo
 lecti, ad
 eum viden-
 dum.
- adjornata sint, inprimis & ante omnia fiat b̄re de vi-
 dēdo essoniatum de malo lecti in hac forma: Mitte
 quatuor legales milites de cōm̄ tuo apud talem villam
 ad videndum utrum infirmitas, qua A. de N. in curia
 nostra coram justiciariis nostris apud W. essoniavit se
 de malo lecti, versus B. de N. de placito terrē vel
 hujusmodi, sit languor vel non, & si sit languor,
 tunc ponant ei diem à die visus sui in unum annum
 & unum diem apud Turrim London, quod tunc sit ibi
 inde responsurus, vel sufficientē p̄ se mittat responsalē,
 & si non sit lāguor, tunc ponāt ei diē coram justicia-
 riis nostris apud W. in octabis &c. q̄ tunc sit ibi inde
 responsurus, vel sufficientē p̄ se mittat responsalē. Et
 die quatuor militibus illis q̄ sint corā eisdem justicia-
 riis nostris apud West. ad p̄dictum terminū ad testifi-
 candū visum suū, & q̄m diem ei posuerunt, & habeas
 ibi nomina militū, & hoc breve. Si autē terra fuerit in
 cōm̄ uno, et tenens jacuerit in alio, tunc ad vicecomitē
 illius comitatus, ubi essoniatus jacuerit, dirigatur breve,
 et dicatur in brevi de placito terre in tali comitatu.
 Si autē plures, qui tenuerint in cōmuni p̄ indiviso, vel
 sicut vir et uxor, se essoniaverint in eodē cōm̄ et jacu-
- f. 353.

greater part shall be abided by. But if they are equal in number, then the one of greater dignity with the presumption of the rolls. But if one differs from another, then on account of the defect of proof that day shall be held not to have been given, and let the trial proceed afresh.

CHAPTER X.

After the essoins for bed-sickness and for sickness on the way have been adjourned, in the first place and before anything let a writ be issued for viewing the person essoined for bed-sickness in this form: Send four loyal knights of your county to such a vill to see whether the illness, concerning which A. de N. has essoined himself for bed-sickness in our court before our justiciaries at Westminster against B. de N., in a suit for land or such like, be languor or not; and if it be languor, then let them appoint to him a day after the day of their view of him up to one year and one day at the Tower of London, that he be then there to make answer or send a sufficient answerer in his place; and if it be not languor, then let them appoint a day for him to appear before our justiciaries at Westminster in the octave &c., that he be there then to answer, or that he send a sufficient answerer in his place. And say to those four knights that they should present themselves before our said justiciaries at Westminster at the aforesaid time to testify their view and what day they have appointed to him, and have thou there the names of the knights and this writ. But if the land be in one county and the tenant be lying in another, then let a writ be directed to the viscount of that county, in which the essoinee shall be lying, and let it be explained in the writ concerning the suit for land in that county. But if several persons who have held that land in common as a whole, or as husband and wife, have essoined them-

1.
A writ to
send four
knights to
him, who
has been
essoined
for bed-
sickness, in
order to
view him.

f. 353.

erint in diversis locis & diversis villis, tunc fiat breve hoc modo: Mitte quatuor legales milites de cōm tuo apud talē villam ad videndū utrum infirmitas, qua C. de N. in curia n̄ra &c. essoniavit se de malo lecti versus eundē B. de placito terræ, sit languor vel non, & sic fiat de pluribus pticipibus in infinitū qui jacuerint in eodē comitatu in diversis villis & locis. Et tunc sic: Et si sint languores, licet plures judicari debeāt p uno, tunc ponant eis diē à die visus sui in unū annū & unū diē apud Turrim Lond̄ q̄ sint tunc ibi respōsuri, ut supra. Et eodē modo dicatur de viro & uxore, si essoniati fuerint simul et in eodē cōm in diversis locis. Si autem in eodē comitatu et eodē loco, tunc fiat breve sic: Mitte quatuor legales milites de cōm tuo apud talē locū ad videndū utrū infirmitas, qua tales, talis & talis (et sic deinceps) in curia nostra &c. essoniaverint se de malo lecti versus talem de placito terræ, sint languores vel non, et si sint lāguores &c. ut supra. Si autē plures pticipes essoniati de malo lecti jacuerint in diversis comitatibus, quilibet habebit b̄re suū per se ad vicecomitem ubi jacuerint, secundū q̄ in uno comitatu jacuerint plures vel unus. Et cū plures pticipes (ut prædictū est) habere nō debeāt nisi unicū languorē, cūm unus vel plures simul essoniati fuerint de malo lecti, et dies datus petēti & pticipibus, qui psētes erunt p se vel p essoniatores, si fuerint essoniati, nō possunt alii pticipes ad aliq̄m diē se essoniare de malo lecti, donec cōstiterit utrū primo essoniatus de malo lecti languorē habuerit vel infirmitatē trāseuntē, q̄ si esset et utriq̄ eorū diversis tēpori-

selves in the same county and have lain in divers places and in divers villis, then let a writ be drawn up in this manner: Send four loyal knights of your county to such a vill in order to see whether the illness for which C. de N. has essoined himself in our court &c. for bed-sickness against the said B. in a suit for land be languor or not, and so let it be done concerning several parceners without end who have lain in the same county in divers villis and places. And then thus: and if there be languors, although several ought to be judged instead of one, then let them appoint for them from the day of their view of them a day at the end of one year and one day at the Tower of London, that they be there to answer as above. And in the same manner let it be said concerning a husband and wife, if they have been essoined together and in the same county in different places. But if in the same county and in the same place, then let the writ run thus: Send four loyal knights of thy county to such a place in order to see whether the illness, for which such persons, so-and-so and so-and-so (and so in succession) in our court &c. have essoined themselves for bed-sickness against so-and-so in a suit for land, be languors or not, and if they be languors &c. as above. But if several parceners essoined for bed-sickness shall lie in different counties, each shall have his own writ by himself to the viscount where they lie, according as one or more lie in one county. And when several parceners (as aforesaid) ought not to have more than a single essoin for languor, when one or more have been essoined together for bed-sickness, and a day has been given to the claimant and his parceners, who shall be present either by themselves or by their essoiners, if they have been essoined, the other parceners cannot essoin themselves for another day for bed-sickness, until it be ascertained whether the first person essoined for bed-sickness has a languor or a transient illness, because if it were so and a languor

bus languor esset adjudicatus, et diversus annus & dies datus, sic essent ibi duo lāguores de uno placito, q esse non debet. Sed cum primo essoniatus surrexit per licentiā, vel malū transiens ei per milites adjudicatum fuerit, & de eo cōstiterit, statim incipiat particeps unus vel plures se essoniare de malo lecti, dum tamen p̄cesserit essonium de malo veniendi, et sic eodem modo (ut prādictum est) donec omnes eorum simul, vel quidā eorum, vel unus tantum unicum haberit languorem. Cū autem petens post essonium redditum, et diem certum acceptum, si sit malum transiens, statim sine mora habere faciat vicecomiti breve de videndo essoniatum.

2.
De officio
vicecomitis,
cum suscepit
breve.

f. 353 b.

Officium vero vicecomitis est cū suscepit breve in comitatu, statim mittere quatuor legales milites ad videndum essoniatum. Assumere autē debet ad hoc milites præsentes, & non suūonere absentes, propter verba brevis, Mitte. Item non sufficit si mittat ser-vientes, milites enim esse debent ppter verba brevis, mitte milites. Item nō sufficit mittere tres ppter verba brevis, mitte quatuor, & quia certus numerus adjicitur, scilicet quatuor, duo vel tres sufficiunt. Itē nō sufficit si duo vel tres sibi socios assumant usq, ad quatuor, quia videre nō debent nec testificari nisi mittantur de comitatu suo: ideo dicitur de comitatu, quia si alios mittere vellet, nō habeat coercionem. Item apud talē locū ideo dicitur, quia si essoniator in loco in essonio nominato nō inveniretur, ita posset esse in defalta, vel si modo debito se nō teneret in languore. Itē ad videndū utrum infirmitas &c. videre enim debēt

should have been adjudged to each of them at different times, and a different year and day appointed to them, there would thus be two languors in one suit, which ought not to be. But when the first essoinee has risen up through a licence, or a transient illness has been adjudged to him by the knights, and his case has been ascertained, forthwith let one or more parceners begin to essoin himself for bed-sickness, provided an essoin for sickness on the way has preceded, and so in the same manner (as aforesaid) until all of them together, or certain of them, or one only have had a single languor. But when the claimant after the essoin has been returned and a certain day appointed, if it be a transient illness let him forthwith without delay cause the viscount to receive a writ to view the essoinee.

But it is the office of the viscount, when he has received the writ in his county, to send forthwith four loyal knights to view the essoinee. And he ought to assume for this purpose knights who are present, and not to summon absent knights, on account of the words of the writ, "send." Likewise it is not sufficient, if he sends serjeants, for they ought to be knights on account of the words of the writ, "send knights." Likewise it is not sufficient to send three, on account of the words of the writ "send four," and because a certain number is added, to wit, "four," two or three do not suffice. Likewise it does not suffice if two or three assume associates up to the number of four, for they ought not to view nor to testify, unless they are sent from his county, accordingly it is said "from the county," because if he wishes to send others, he would not have coercion. Likewise "at such a place" is said for this reason, because if the essoiner be not found in the place named in the essoin, he might so be in default, or if he did not keep himself in the proper manner in a case of languor. Likewise it is to be seen whether the illness &c., for they ought to view the bodies,

2.
Of the
office of
the vis-
count,
when he
has re-
ceived a
writ.
f. 353 b.

corpora, & diligenter inquirere de qualitate infirmitatis & circūstantiis, & secundū hoc judicare malum transiens vel languorem, & rationem inde reddere, si fuerint inde requisiti, & secundū hoc dare diē certum, vel in curia, vel apud Turrin Lond̄, & ideo apud Turrin ppter locum certum, & ubi cōstabularius semper p̄sens esse debet, & cōtinuus, & qui testificari debet diem apparitionis & adventus, & hoc quia justiciarii nō semper cōtinuè p annum in banco sunt residentes. Et cū ita in curia & in iudicio datus sit dies partibus post annū & diem apud Turrin, nō sufficit si ptes veniant (omisso loco illo Turris) coram justitiariis apud Westmonasteriū in banco, si tunc ibi fuerint residentes, quia aliud est dare diem apud Turrin, & aliud in bāco Westm̄, & sic cū diem habuerint apud Turrin, à constabulario apud Turrin debet diem recipere ad bancū, si justiciarii fuerint residentes in banco, vel si non residentes, tunc cū justic. ibi primò venerint, nisi ita sit, q tunc itinerantes fuerint in comitatu, quia tunc ibi detur dies, ex quo omnes loquelæ, quæ in banco fuerint positæ, sunt & remanent sine die p publicam declamationē inde factam. Si autem justic. residentes fuerint in banco, & similiter justiciarii itinerantes in comitatu ubi terra sita est quæ petitur, tunc detur dies corā justiciariis de bāco, & justiciarii de bāco diem præfigant corā justiciariis itinerātibus in comitatu quasi ordine observato. Et de hac materia pleniūs dicetur inferiūs, secundū q partes venerint apud Turrin vel nō venerint. Item bene cōtingere poterit q essoniatus apud Turrin venire non possit ad diem suum, quia forte lāguor

and inquire diligently concerning the character of the illness and the circumstances, and accordingly to judge whether it be a transient illness or a tedious disease, and to render an account thereof if they be required, and accordingly to appoint a certain day either in the Court or at the Tower of London, and for this reason at the Tower, as being a certain place and where the constable ought always to be present and continuously so, and who ought to testify to the day of their appearance and arrival, and this because the justiciaries are not continuously resident throughout the year at the Bench. And when there has thus been given in the court and in judgment a day to the parties after a year and a day at the Tower, it is not sufficient if the parties should come (having omitted the place of the Tower) before the justiciaries at Westminster in the Bench, if they should be then resident therein, for it is one thing to appoint a day at the Tower, and another at the Bench in Westminster, and so when they have had a day at the Tower, they ought to receive from the constable at the Tower a day at the Bench, if the justiciaries are in residence at the Bench, or if not in residence, then when the justiciaries have first come there, unless it so be that they are then itinerant in the county, because in that case let a day be given there, since all the trials, which have been placed at the Bench, are and remain without a day by a public declaration there made aloud. But if the justiciaries should be resident in the Bench, and in like manner there are justiciaries itinerant in the county, where the land is which is claimed, then let a day be given before the justiciaries of the bench, and let the justiciaries of the bench appoint a day before the justiciaries itinerant in the county as it were order being observed. And on this matter more will be said below, according as the parties have come to the Tower or have not come. Likewise it may well happen that an essoinee cannot come to the Tower on the day given to him, because his languor has turned into a

vertitur in morbū sōticū, scilicet in morbū incurabilē, quo casu, cū venire nō possit, mittere debeat sufficientē respōsalem qui in se suscipiat iudiciū, & ejus respōsionē oportet habere ratā, secundum q̄ inferiūs dicitur. Item dicere debet vicecomes militibus q̄ sint ad diem certum in brevi cōtentum corā justiciariis apud W. ad testificandū visū suū, & qm̄ diem ei posuerunt. Si autem petens diligens fuerit in psecutione, & vicecomes negligens fuerit cū b̄re susceperit, tūc p̄cipiatur vicecōm̄ (sicut prius) q̄ ipse sit auditurus iudiciū suū, & sic puniatur ejus negligentia. Si autē steterit p̄ petentē, & nō p̄ vicecomitē, quo minus essoniatus visus fuerit, tunc in defectu petentis detur essoniato licentia surgendi, si licentiā petierit & convaluerit de infirmitate, & dabitur petenti alius dies, & mandetur essoniato q̄ statim veniat ad curiam, ut habeat eundem diē, quia cū tenens essoniatus fuerit de malo lecti, postquam in curia semel cōparuerit, sine visu quatuor militum, vel sine licentia impunē surgere nō poterit, secundū q̄ inferiūs dicitur. Si autē nec petens nec vicecomes negligens fuerit, & milites visum nō fecerint forte, vel cū fecerint nō venerint ad testificandū, tunc ad diē datum, offerente se liti petēte versus tenentē & milites, tunc attachientur milites secundum q̄ nomina eorum in brevi scribuntur, p̄ tale b̄re, & fiat ita irrotulatio si vic. miserit b̄re.

3.
Irrotulatio
si visores A. optulit se quarto die versus B., & B. nō venit,
nec quatuor milites, (vel sic & melius) A. optulit se

malignant disease, to wit, into an incurable disease, in which case, since he cannot come, he ought to send a sufficient representative to take upon himself the judgment, and it is incumbent that his answer should be ratified according to what will be said below. Likewise the viscount ought to say to the knights, that they should be on a certain day contained in the writ before the justiciaries at Westminster to testify to their view, and as to what day they have assigned to him. But if the claimant has been diligent in prosecuting his suit, and the viscount has been negligent when he has received the writ, then let it be enjoined to the viscount (as before), that he himself be present to hear his judgment, and so let his negligence be punished. But if it has been caused through the claimant and not through the viscount that the essoinee has not been viewed, then in the defect of the claimant let a license of getting up be granted to the essoinee, if he has asked for a license and has become convalescent from his illness, and another day shall be granted to the claimant, and let an order be sent to the essoinee that he forthwith come to the court, that he may have the same day, because when the tenant has been essoined for bed-sickness, after he has once appeared in court, he cannot rise with impunity from his bed without a view on the part of the four knights or without a license, according to what will be said below. But if neither the claimant nor the viscount has been negligent, and the knights by chance have not made a view, and when they have made it, have not come to testify to it, then on the day granted, the claimant offering himself to take issue with the tenant and the knights, then let the knights be attached according as their names are written upon the writ by a writ of this kind, and let the enrolment be made thus, if the viscount has sent a writ.

f. 354.

A. presented himself on the fourth day against B.,
and B. has not come nor the four knights, (or thus and

3.
An enrol-
ment, if the

non ven-
erint.

quarto die versus talē qui se essoniavit de malo lecti versus eundē A. de placito terræ, & talis nō venit, nec milites qui fecerunt visum de eo, nec vicecomes misit bre, & ideo (sic ut prius) p̄cipiatur vicecomiti q̄ vicecomes sit auditorus iudicium suum &c. Et semp dabitur participibus, & parti idem dies. Si autē vicecomes miserit breve ad primū diē, & milites nō venerint, & vicecomes mādaverit nomina militū, tunc fiat irrotulatio sic: A. optulit se quarto die versus B. qui se essoniavit de malo lecti versus eundē A. de placito terræ &c., & B. nō venit, nec milites qui fecerunt visum de eo, s. C. D. E. F., & vicecomes misit breve, & ideo milites attachientur q̄ sint ad talē diem ad testificādum &c., & idem dies datus est tali petenti, & talibus p̄cipibus &c. Forma brevis talis est.

4.
Breve de
attachiendo
milites.

Rex vic. salutē. Pone p̄ vadium et salvos plegios C. D. E. F. visores infirmitatis, qua A. de N. in curia n̄ra corā justic. n̄ris apud Westm̄ essoniavit se de malo lecti versus A. de N. de placito terræ in tali villa, vel de placito terræ in tali villa,¹ vel in tali alio comitatu,² q̄ sint coram justiciariis nostris apud Westm̄ ad talem diem ad testificādum visum suum, & q̄m diē ei posuerunt, et ad ostendendum quare nō fuerunt coram eisdem justiciariis nostris apud W. ad talem diem sicut eis p̄ceptū fuit, & habeas ibi nomina plegiorū & hoc bre. Ad q̄m diem poterit petens se essoniare si voluerit, & p̄cipēs similiter: vel cōparere, & habere aliū diem p̄ se, vel p̄ essoniatores suos. Et si vicecom̄ milites attach. & breve miserit ad aliū diem,

¹ "vel de placito terræ in tali villa," omitted MS. Rawl. C. 160. | ² "vel in tali in alio comitatu," MS. id.

better,) A. presented himself on the fourth day against so-and-so who essoined himself for bed-sickness against the said A. in a suit for land, and so-and-so has not come, nor the knights who made the view of him, nor has the viscount sent a writ and therefore (so as before), let it be enjoined upon the viscount that the viscount be present to hear his own judgment &c. And the same day shall always be given to the parceners and to the party. But if the viscount has sent a writ on the first day, and the knights have not come, and the viscount has announced the names of the knights, then let there be an enrolment in this manner: A. has presented himself on the fourth day against B., who has essoined himself for bed-sickness against the said A. in a suit for land &c., and B. has not come, nor the knights who have made a view of him, to wit C. D. E. F., and the viscount has sent a writ, and accordingly let the knights be attached that they be present on such a day to testify &c., and the same day is granted to the said claimant and to so-and-so his partners &c. The form of the writ is of this kind.

The king to the viscount greeting. Put under bail and safe sureties C. D. E. F., the viewers of the illness for which A. de N. in our court before our justiciaries at Westminster has essoined himself for bed-sickness against A. de N. in a suit for land in such a vill, or in such a vill in another county, that they present themselves before our justiciaries at Westminster on such a day to testify to their view, and to the day which they have assigned to him, and to show wherefore they did not present themselves before our said justiciaries at Westminster on such a day as was enjoined to them, and do thou have there the names of the sureties and this writ. At which day the claimant may essoin himself, if he shall wish, and his partners in like manner: or he may appear and have another day through himself or through his essoiners: and if the viscount should attach

knights
have not
come.

4.
A writ for
attaching
the
knights

et essoniatus nō venerit, nec milites, tūc petēte vel ejus essoniatore, primo, secundo, tertio, vel quarto die se liti offerente, attachientur milites p meliores plegios, et fiat ita irrotulatio: A. optulit se quarto die versus B. qui se essoniavit de malo lecti versus eundē A. de placito terræ &c. (ut supra) et B. nō venit, nec milites qui fecerūt visum de eo, s. C. D. E. F., et vic. mandavit q attachiati fuerunt, s. C. p tales, & D. per tales, & sic de aliis, unde ponātur per meliores plegios q sint ad talem diē. Idem dies datus est parti petenti, et participibus tenentibus. Forma brevis talis est: Pone p vadiū & salvos plegios C. D. E. F. visores infirmitatis, qua B. de N. in curia nostra &c. essoniavit se de malo lecti versus A. de placito terræ in tali villa, q sint coram &c. tali die ad testificandum visum suum, & quem diem ei posuerunt, et ad ostendendum quare non fuerint coram justiciariis &c. ad talem diem sicut attachiati fuerunt. Et summoneas per bonos summonitores tales primos plegios C. & tales primos plegios D., & sic de aliis, quōd sint coram præfatis justic. nostris ad prædictum diem ad audiendum iudicium suum de hoc, quōd præfatos C. D. E. F. coram præfatis justiciariis nostris ad talem diem non habuerunt, sicut eos plegiaverunt. Et habeas ibi suūmonitores, nomina secundorum plegiorū, et hoc breve. Teste &c. Et ad quem diem si milites non venerint, omnes plegii erunt in misericordia, et præcipietur tunc vicecomiti q habeat corpora militum ad alium diem, et q sint ad audien-

f. 354 b.

the knights and shall have sent a writ for another day and the essoince shall not have come, nor the knights, then upon the claimant or his essoiner on the first, second, third or fourth day presenting himself to join issue, let the knights be attached by better sureties, and let the enrolment be made thus: A. has presented himself on the fourth day against B. who has essoined himself for bed-sickness against the said A. in a suit for land &c., (as above), and B. has not come, nor the knights who have made a view of him, to wit, C. D. E. F., and the viscount has ordered that they should be attached, to wit, C. by such persons and D. by such persons, and so concerning the others, whereby they should be put under better sureties that they should present themselves on such a day. The same day has been assigned to the party claiming and to the tenant parceners. The form of the writ is of this kind: Put under bail and safe sureties C. D. E. F., the viewers of the illness, for which B. de N. in our court &c. has essoined himself for bed-sickness against the said A. in a suit for land in such a vill, that they present themselves before &c. on such a day to testify to their view and as to what day they assigned to him, and to show wherefore they were not present before our justiciaries &c. on such a day as they were attached. And summon by good summoners the said first sureties C. and the said first sureties D., and so of the others, that they be present before our aforesaid justiciaries on the aforesaid day to hear judgment against them upon this, that they have not produced the aforesaid C. D. E. F. before our aforesaid justiciaries on the aforesaid day, as they pledged themselves to do. And produce there the summoners, the names of the second sureties, and this writ. Witness &c. And on which day if the knights have not come, all the sureties shall be at mercy, and it shall then be enjoined to the viscount that he produce the persons of the knights on another day, and that they be present to

f. 354 b.

dum iudiciū suum de pluribus defaultis, et si ad diem illum non venerint, iterum ꝑcipietur vicecomiti quòd distringat eos ꝑ terras et catalla, quòd sint ad alium diem, et semper idem dies dabitur parti & participibus, & si tunc non venerint, aggravabitur districtio (secundum q̄ inferiùs dicetur plenius de attachiamentis et districtionibus in personalibus actionibus). Item cū omnes visum fecerint, tamen non venerint ad testificandum primo die nisi tātum unus, duo, vel tres, quo casu aut essoniatus venit aut non venit, & cum non venerit, petente se liti offerente, fiat sic irrotulatio. Quia nullus quatuor militū testificari potest, vel recordum habeat sine altero, quia aut omnes testificantur aut nullus. Sed quare non sufficiunt duo vel tres ad certificandum sine quatuor, secundū illud Evangelium, q̄ in ore duorum vel triū testium stat omne verbum? respondeo, q̄ non sufficiunt duo, quia ubi certus numerus adjicitur à lege vel constitutione quacunque ratione, duo non sufficiunt, sicut hic, et ad audiendum quem quis attornare voluerit loco suo ad lucrandum vel ꝑdendum, ubi similiter quatuor sunt necessarii ut infra

Cf. fol. 61. plenius dicetur. Item in testamentis illud idem, ubi vii. testes sunt necessarii, et alibi in multis locis. Irrotulatio: A. optulit se quarto die versus B. qui se esso-
niavit &c. ut supra, et B. non venit, nec milites qui fecerunt visum de eo, nisi tantum duo, scilicet C. et D. et ideo E. et F. qui non venerunt, attachientur q̄ sint ad talem diem ad testificandum &c. ut supra. Et dabitur dies parti et ꝑticipibus, et postea attachientur per meliores plegios, et procedatur (ut supra) ad dis-

hear judgment against themselves for several defaults, and if they have not come upon that day, let it be a second time enjoined upon the viscount to distrain them by their lands and chattels, that they be present on another day, and the same day shall always be given to the party and to his partners; then if they have not come, the distraint shall be enhanced (according to what will be said below more fully concerning attachments and distraints in personal actions). Likewise when they have all made a view, and nevertheless have not come to testify on the first day, except only one, or two, or three, in which case the essoinee has either come or not come, and when he has not come, upon the claimant offering to join issue, let the enrolment be made thus. Because none of the four knights can testify or have a record without the others, because either all testify or none. But why do not two or three suffice to testify without four, according to the passage in the Gospel, that in the mouth of two or of three witnesses every word standeth? I answer that two do not suffice, because where a certain number is added by the law or by a statute for whatever reason, two do not suffice, as in this case, and to hear whom a person has wished to attorn in his place to gain or to lose, where in like manner four are necessary, as will be explained more fully below. Likewise the same thing takes place in the case of testaments, where seven witnesses are necessary, and elsewhere in many places. The enrolment: A. has presented himself on the fourth day against B. who has essoined himself &c. as above, and B. has not come nor the knights who have made a view of him, except only two, to wit, C. and D., and therefore let E. and F., who have not come, be attached that they should come on a certain day to testify &c. as above. And a day shall be given to the party and to his partners, and afterwards let them be attached by better sureties, and let proceedings be had as above to a distraint until they

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trictionem donec omnes venerint, et testificentur simul: et formari poterunt brevia secundū q̄ superius dicitur per exemplū. Cū autē quatuor milites simul missi fuerint ad videndum, anteqm viderint, vel postqm viderint, anteqm testificentur, contingat q̄ unus vel duo vel tres morientur, quo casu oportet q̄ alii loco ipsorum substituantur, et q̄ tunc omnes simul videant, et simul testificentur, p̄ tale breve.

5.
Si unus
visorum
infirmus
sit vel
inutilis,
ponatur
alius loco
suo.

Rex vic. salutem. Præcipimus tibi q̄ loco C. unius visorū qui mortuus est, vel infirmus, vel ita debilitatus, q̄ itinerare nō potest, vel sic: loco C. unius visorū qui mortuus est, in loco D. alterius visorū qui infirmus est ac debilitatus, vel inutilis q̄ itinerare nō potest, visorū infirmitate¹ qua D. de N. in curia nra &c. ut supra, ponas aliū vel alios milites, et alium vel alios milites simul cū E. et F. de N. prius missis ad p̄dictū D. ad vidēdū utrū infirmitas quā p̄dictus B. in curia nostra &c. essoniavit se de malo lecti versus p̄dictū A. de placito terræ in N. sit languor &c. vel nō &c. ut supra in primo brevi originali. Itē si unus vel duo (secundū q̄ p̄dictū est) mortui nō fuerint, nec debilitati, sed forte ex aliqua causa necessaria se transulerint extra com̄ ita q̄ alii p̄ defectu talis visū facere nō possūt, vel testificari, tūc loco taliū ponātur alii qui visum faciant, et tunc dicatur q̄ loco C. et D. visorum infirmitatis qua &c. ponas alios milites et illos milites simul cum talibus &c. ut supra &c. usq̄ ad clausulam, scilicet, vel sufficientē p̄ se mittant responsalem, & tunc addatur in fine ratio, quare illi prius missi videre infirmum nō potuerūt, p̄ defectu C. et D., et dicatur in fine brevis ita: Et unde p̄dicti E. et F. in curia nos-

f. 355.

¹ infirmitatis, MS. Rawl. C. 160.

all have come, and let them testify together, and writs may be drawn up in accordance with what has been said above for example. But when the four knights have been sent together to view, before they have viewed, or after they have viewed, before they have testified, it may happen that one or two or three shall die, in which case it is incumbent that others be substituted in the place of them, and that thereupon they should all view, and testify together by a writ of this kind.

The king to the viscount greeting. We enjoin you that in the place of C., one of the viewers, who is dead or infirm or so debilitated that he cannot travel, or thus: in the place of C., one of the viewers, who is dead, in the place of D., another of the viewers, who is infirm or is debilitated or inefficient so that he cannot travel, the viewers of the illness whereby D. de N. in our court &c. as above, you appoint another or other knights, and another or other knights, together with E. and F. de N. previously sent to the aforesaid D. to view whether the infirmity for which the aforesaid B. in our court &c. has essoined himself against the aforesaid A. in a suit of land in N. be languor &c. or not &c., as above in the first original writ. Likewise if one or two (as above said) have not died nor become debilitated, but by chance from some necessary cause have transferred themselves out of the county, so that the others from the failure of so-and-so cannot make a view or testify to it, then in the place of such persons let others be appointed to make the view, and then let it be said in the place of C. and D., viewers of the illness for which &c., do thou appoint other knights, and those knights together with such &c. as above, up to the clause "to wit;" or let them send a respondent sufficient by himself, and then let there be added at the end the reason, wherefore those first sent could not view the sick man from the failure of C. and D., and let there be said at the end of the writ thus: And whereof the

5.
If one of
the viewers
be infirm
or ineffi-
cient, let
another be
put into his
place.

f. 355.

tra coram justiciariis nostris talibus dixerunt q prædicti C. et D. non fuerunt in ptibus illis, & p defectu eorū nō potuerunt visum facere de p̄dicto B., et dic prædictis militibus q sint corā p̄fatis justiciariis &c. simul cum p̄dictis E. et F. ad prædictum terminum ad testificandum visum suum, & quem diem ei posuerint, et si forte vicecomes cōtra formam brevis elegerit tales, qui nō fuerint p̄sentes et extra comitatū, tunc dicatur in fine, et tu ipse sis ibi auditurus iudicium tuū, ad hoc q p̄dictos C. et D. qui absentes fuerint & extra comitatū elegisti ad videndū, desicut p̄sentes misisse debuisti, et ita q loquela illa p hoc cepit tantā dilationē, & habeas ibi hoc b̄re & nomina militum quos de novo miseris. Teste &c. Si autē contingat q omnes moriātur antequā viderint, vel cū viderint anteqm testificentur, tūc de novo mittātur alii. Item si ad primū diē nec milites venerīt, nec essoniati, nec vicecomes miserit breve, offerēte se liti petente, quia nescitur quid actū sit, vel quia forte nihil actū est, de novo p̄cipiatur vicecomiti q mittat quatuor milites, et ipse sit ibi auditurus iudiciū suū, q primū breve nō misit &c. Si autē ad primū diē nō venerint milites, nec vicecomes misit breve, & essoniatus venerit primo die, & petens, tūc p̄cedit inter eos loquela, nisi forte sit q petens objicere velit tenenti q tenēs sine licentia surrexerit, vel sine visu militū, vel si p visum militū surrexerit et petens se tenuerit in defaltam, dixerit q alii

aforesaid E. and F. in our court before so-and-so our justiciaries have said that the aforesaid C. and D. were not in those parts, and from their failure they could not make a view of the aforesaid B., and say to the aforesaid knights that they present themselves before our aforesaid justiciaries &c. together with the aforesaid E. and F. at the aforesaid term to testify to their view and as to what day they have assigned to him, and if by chance the viscount contrary to the form of the writ has chosen those who were not present and were outside the county, then let it be said at the end, and do thou be there to hear judgment against thyself, on this point, that you have chosen as viewers the aforesaid C. and D. who were absent and outside the county, whereas you ought to have sent those who were present, and so that this trial has through this cause undergone so much delay, and do thou produce there this writ and the names of the knights whom you have sent afresh. Witness &c. But if it should happen that they all die before they have viewed, or after they have viewed, before they have testified, then let others be sent afresh. Likewise if on the first day neither the knights have come nor the essoinees, nor the sheriff has sent the writ, upon the claimant presenting himself to join issue, because it is unknown what has been done, or because by chance nothing has been done, let it be enjoined afresh to the viscount, that he send four knights, and that he himself attend to hear judgment against himself, because he has not sent the writ &c. But if on the first day the knights have not come nor the viscount has sent the writ, and the essoinee has come on the first day and the claimant, then the trial proceeds between them, unless by chance the claimant wishes to object to the tenant that he has left his bed without leave, or without the view of the knights, or if through the view of the knights he has risen from his bed and the claimant has placed himself in default, or shall have said that other

milites viderūt cum qm ad ipsum missi fuerunt, omnes, vel quidā ex illis: vel q surrexerit p visum aliorū, quā p visum militū, s. liberorū hominū, vel p visum militū, & similiter p visum liberorū hominū, qui forte in ipso visu faciēdo assūpti fuerunt p imperitiā ad vidēdum cum militibus: ut de terṃ S. M. aū regni regis H. ix. incipiente x. in coṃ Warr. de Rogero Levelande petēte, et Richardo de Gloc. tenēte, et essoniato, & ubi assumptus fuit serviens regis p quarto milite. Et cū petens ita se tenuerit ad defaltā, oportebit inquirere veritatē. Si autē objecerit petens essoniato, q sine licētia surrexerit, si de hoc cōstiterit, poterit tenēs amittere p defaltā, quia post essoniū de malo lecti redditū nō potest essoniatus surgere sine licētia, nec si licentiā petat, dabitur ei nisi ex causa, et infra certū tēpus, et ultra tēpus nō, nisi tantum de voluntate et cōsensu petētis. Causa enim esse poterit q cūm cōvaluerit de infirmitate, et nōdum visus est, p fraudē & malitiā petētis forte, qui supprimit breve et negligēter psequitur, vel p negligētiā vicecomitis, qui forte nō mittit milites, sicut ei pceptum est, vel p defectu militum qui visum nō faciunt, et in quibus casibus si essoniatus cōvaluerit de infirmitate, et nōdum visus fuerit, habebit licētiā surgēdi in defectum prædictorum. Et quōd licentia surgendi dari debeat essoniato qui visus fuerit legitimē per quatuor milites sive languorem adjudicaverint, sive malum transiens, donec venerint et languorem sive malum trāsiens testi-

knights than those who were sent to him, have viewed him, all or some of them : or that he has risen from his bed through the view of others rather than through the view of knights, that is, of free men, or through the view of knights and in like manner through the view of free men, who by chance in making the said view have been assumed through inexperience to make a view together with the knights, as in St. Michael's term in the ninth and tenth years of the reign of king Henry, in the county of Warwick, concerning Roger Lavelande the claimant, and Richard of Gloucester the tenant and the essoinee, and where a serjeant of the king had been assumed in the place of the fourth knight. And when the claimant has so placed himself in default, it will be incumbent to inquire the truth. But if the claimant has objected to the essoince that he has risen from his bed without leave, if this has been established, the tenant may lose by default, because after an essoin of bed-sickness has been returned the essoinee may not rise from his bed without leave, nor if he asks for leave, will it be granted to him without a cause and within a certain time, and beyond the time not so, except with the will and consent of the claimant. For a cause may be that when he is convalescent from his illness, and has been not yet viewed, through the fraud and malice of the claimant by chance who suppresses the writ and prosecutes negligently, or through the negligence of the viscount, who by chance does not send knights as he has been enjoined, or from the failure of the knights, who have not made a view, and in which cases if the essoinee has become convalescent from his illness, and has not been yet viewed, he will have leave to rise from his bed in default of the aforesaid persons, and that leave to rise from his bed ought to be granted to the essoinee, who has been lawfully viewed by the four knights, whether they have adjudged it to be languor or a passing illness, until they have come and have ad-

f. 355 b. caverint: habetis de terrā S. T. anno regis H. xiv. in com̃ Norf. de priore de Longa Villa, et de terrā S. P. circa medium rotuli, quia ibi dicitur, q si quis se essoniaverit de malo lecti et milites visum fecerunt de eo, sed tamē nō venerunt ad testificandū, nec petens sequatur versus eos, habebit essoniatus licētiā surgendi in defectu petentis, sive languor adjudicatus fuerit sive nō, & alibi in multis locis. Si autē cū visus fuerit, et petens negligens fuerit q sequi noluerit versus milites q sint ad testificādum sive lāguorem adjudicaverint sive malū trāsions, cū adhuc sit loquela integra in curia, si licentiā petat surgendi, ppter malitiā ipsius petentis obtinebit licentiā, nō obstante eo q dicitur in ipsa petitione licentiæ, q nōdum visus est, quia non multum operatur videre, nisi visus sit testatus, sed cū visus factus fuerit & testatus, sed tamen nullus dies petenti datus apud Turrim, ante diem datum bene possit dari licentia surgendi, secundū quosdā, cū petens apud Turrim diem nō receperit. Cū autē diem receperit, jam desinit esse loquela in curia, donec aliās per constabularium Turris post annum et diem iterū ad curiā remittatur, et sic obtinebit essoniatus de malo lecti licentiā surgendi usq ad diē datū apud Turrim, post tempus vero illud nunquam licentiā obtinebit cōtra voluntatē ipsius petentis. Si autē ad hoc assensum pstitit, & languidus cōvaluerit, et licētiā petierit surgēdi, cum cōsensu petentis obtinebit, ita q ad certū diem cōveniant tenens & petens, ut suo tra-

judged it to be languor or a passing illness, you have a case in Holy Trinity term in the fourteenth year of king Henry in the county of Norfolk, concerning the prior of Longa Villa, and in Easter Term about the middle of the roll, because it is there said, that if any one has essoined himself for bed-sickness and the knights have had a view of him, but have not come to testify to it, nor does the claimant sue against them, the essoinee shall have leave to rise from his bed in the default of the claimant whether languor has been adjudged or not, and elsewhere in many places. But if when he has been viewed, and the claimant has been negligent from being unwilling to sue against the knights that they should be present to testify whether they have adjudged languor or a transient illness, since the trial is still entire in the court, if he asks for leave to rise from his bed, on account of the malice of the said claimant he shall obtain leave, notwithstanding that it is said in the said petition for leave, that he has not yet been viewed, for it does not much import to view him, if the view has not been testified, but when the view has been made and testified, but nevertheless no day has been appointed to the claimant at the Tower, leave to rise from his bed may well be granted before any day is appointed, according to some, since the claimant has not obtained a day to be granted to him at the Tower. But when he has had a day granted to him, the cause then ceases to be in the court, until it is otherwise remitted by the constable of the Tower to the court after a year and a day, and so the essoinee for bed-sickness shall obtain leave to rise from his bed up to the day granted to him at the Tower, but after that time he shall never obtain leave without the consent of the said claimant. But if he has given his consent to this, and the invalid has become convalescent, and has asked for leave to rise from his bed, he shall obtain leave with the consent of the claimant, so that the tenant and the claimant shall agree on a certain

f. 355 b.

mite pcedat loquela. Sed quid si, ante visum factū et testificatū, ppter iter justitiariorū facta fuerit publica declamatio, q omnes loquelæ quæ atterminatæ fuerūt corā justiciariis de bāco, & nō terminatæ remaneāt sine die, cū adhuc loquela inter petentē et essoniātū integra sit in bāco, bene poterit essoniatus sine licētia surgere ppter talē declamationē. Si autē visus factus fuerit & testatus, & dies datus apud Turrim ptibus ulteriūs, nō possit essoniatus surgere, nec cum licentia nec sine, quia loquela non fuit in banco die declamationis factæ.

6.
Qualiter
petenda sit
licentia
surgendi.

Vidēdum erit qualiter licentia surgēdi peti debeat, & sciendū q ad petendā licētiā surgēdi debet essoniatus mittere qm voluerit qui dicat, q talis qui essoniavit de malo lecti convaluit de infirmitate sua, et petit licētiā surgēdi, et sic irrotulabitur corā justiciariis, qui illius loquelæ habuerit cognitionē. Talis qui se essoniat de malo lecti versus talē de placito terræ in tali com̄ mādavit per talē, q cōvaluit de infirmitate sua, & q nōdum visus est, et petit licentiā surgēdi, et habet, et dicatur nūtio q scire faciat essoniato, q statim & sine mora veniat ad curiā, et ibi dicetur ei q observet diē suū, et ideo dicetur ei q statim veniat: ne cū petens inveniat eum vagantē, ignorans sibi datā esse licentiā, ipsum ceperit et in priona detinuerit, q si fecerit, succurritur essoniato per tale breve.

day, so that the cause may proceed in its due course. But what if, before a view has been made and testified, on account of the *iter* of the justiciaries a public proclamation has been made, that all the causes which have been set down before the justiciaries of the Bench and not terminated shall be *remained* without a day, when the trial between the claimant and the essoinee is still entire in the Bench, the essoinee may well rise from his bed without leave on account of such a proclamation. But if a view has been made and testified and a day further granted at the Tower to the parties, the essoinee cannot rise from his bed, neither with leave nor without, because the cause was not in the Bench on the day of the proclamation being made.

We must see therefore how leave to rise from his bed ought to be asked for, and it is to be known that the essoinee ought to send for the purpose of asking for leave to rise from his bed some one whom he may choose, who shall say that so-and-so who has essoined himself for bed-sickness is convalescent from his infirmity, and he asks for leave to rise from his bed, and it shall be thus enrolled before the justiciaries, who have had cognisance of the said cause. So-and-so who essoins himself for bed-sickness against so-and-so in a suit for land in such a county has sent word by such a person that he has got well of his sickness and that he has not yet been viewed, and he begs leave to rise from his bed and he has leave, and let it be said to the messenger that he make it known to the essoinee that he should come forthwith and without delay to the court, and it shall be there said to him that he should observe his day, and accordingly it shall be said to him that he should forthwith come, lest when the claimant finds him at large, ignorant that leave has been granted to him, he should seize him and detain him in prison, which if he should do, aid is afforded to the essoinee by a writ of this character.

6.
How leave
to rise from
bed is to be
asked for.

7. Rex vic. salutē. Si talis fecerit te securū &c. sumō-
 Breve, si post
 licentiam
 petitam et
 obientam
 arrestatus
 fuerit per
 adver-
 sarium.
 f 356.
 neas tales &c. quòd sint corā justiciariis &c. ad talē
 terminū, ad respondendū tali, quare cōtra pacē nostrā
 ceperunt ipsum, et ipsum captū in prisiona detinet, in
 domo ejusdē talis, apud talē locū, occasione placiti
 quod est in curia nostra corā justiciariis nostris &c.
 inter ipsum talē petentē & eundem talē tenentem, de
 tanta terra cum pertinentiis in tali villa, unde idem
 talis in curia nostra &c. essoniavit se de malo lecti
 versus eundem talē petentem, & unde iidem justiciarii
 nostri dederunt eidē licentiam surgendi per defaltā
 ipsius talis petentis, eo quòd de ipso visum fieri non
 fecit, ut idem B. dicit. Et interim ipsum B. delibe-
 rari facias, nisi ex aliqua alia causa captus fuerit
 quare secundū legem terræ deliberari non debeat, &
 habeas ibi hoc breve. Teste &c. Si in curia baronum
 vel alterius dñi in placito de recto denegetur licētia
 surgendi essoniato, vel petens malitiosè supprimat breve
 ne essoniatus videatur, tunc fiat seneschallo curiæ breve
 dñi regis in hac forma.

8. Rex tali seneschallo salutē. Ostensum est nobis ex
 Si in curia
 baronis vel
 alterius
 denegetur
 licentia
 surgendi,
 dominus
 rex licen-
 tiam dabit
 in defectu
 taliam.
 parte A. q. cū B. in curia tua vel talis dñi tui pete-
 ret tantū terræ versus ipsum A. per breve nostrum
 de recto, & idem A. essoniasset se de malo lecti ver-
 sus eundē B. extra feodū dñi tui, ita q. tu non potu-
 isti cum facere videri, nec idē B. sibi perquisivit, ut
 deberet, q. idem A. secundū consuetudinē regni nostri
 videretur per iv. milites, imò malitiosè ipsum detinuit
 per lōgum tempus inclusum, & prædictus A. mitteret
 ad te ad p̃dictā curiam, & peteret licentiā sibi dari

The king to the viscount greeting. If so-and-so has given you surety &c. summon such persons &c. that they be present before the justiciaries &c. at such a term to make answer to so-and-so, wherefore against our peace they have seized him and detain him after seizure in prison, in the house of the said so-and-so, at such a place, on occasion of a cause which is in our court before our justiciaries and between so-and-so the said tenant and so-and-so the said claimant, concerning so much land with its appurtenances in such a vill, whereof the said so-and-so has essoined himself in our court &c. for bed-sickness against the said claimant, and whereupon our said justiciaries have granted to the said so-and-so leave to rise from his bed in the default of the said claimant, on the ground that he had not caused a view to be made of him, as the said B. avers. And in the meanwhile cause the said B. to be set free, unless he has been seized for some other cause, wherefore he ought not in accordance with the law of the land to be set free, and produce there this writ. Witness &c. If in a court of a baron or of some other lord in a plea of right leave to rise from his bed has been denied to an essoince, or the claimant maliciously suppresses the writ, lest the essoince should be viewed, then let a writ of the lord the king issue to the steward of the court in this form.

7.
A writ, if after having asked for and obtained leave he has been arrested by his adversary.

f. 356.

The king to such steward greeting. It has been shown to us on the part of A., that when B. in your court or in the court of your lord claimed so much land against the said A. by our writ of right, and the said A. had essoined himself for bed-sickness against the said B. outside the fee of your lord, so that you could not cause him to be viewed, nor did the said B. request, as he ought to have done, that the said A. should be viewed according to the custom of our realm by four knights, nay has detained him maliciously for a long time locked up, and the aforesaid A. has sent to you at the aforesaid court, and has requested leave to be granted to him to rise from his

8.
If in the court of a baron or of another person there be denied leave to get up, the lord the king shall grant leave in default of such persons.

surgendi & comparendi in eadem curia tua, ad respondendū eidē B. de eodē placito secundū legem & consuetudinē regni nostri, tu ei in eadem curia tua licentiā surgendi denegasti, & quia in denegatione¹ p̄dicto A. manifeste injuriatū est, ei in defectu tui ipsi² licētiā surgendi dedimus, ad respōdendū p̄dicto A. de p̄dicta terra secundū legē & cōsuetudinē regni nostri, & hoc tibi & p̄fatæ curiæ significamus. T. &c. Et p hoc videri poterit q̄ dominus curiæ & ballivus dare possunt licētiā surgendi essoniato, & si talis, multo fortius vicecomes & comitatus.

CAP. XI.

7.
De officio
quatuor
militum in
visu faci-
endo. De
essoniis,
cum missi
venerint ad
locum ubi
essoniatus
jacere
debet.

Quatuor milites legitimè missi post multas dilationes factas, vel statim infra primum diem veniunt ad locū ubi essoniatus jacuerit, vel jacere debuerit, ad videndū &c. & tūc aut inveniūt eum aut non inveniunt. Si autē ipsum omnino nō invenerint, & hoc omnes ad diē datū simul testati fuerint, tunc ipse qui essoniari debet, aut p̄sens est in curia aut nō est p̄sens. Si autem p̄sens non fuerit, tunc capiatur terra in manū dñi regis, vel per magnum cape, vel per parvum cape, secundum quod essonium factum fuerit antequā tenens in curia comparuerit vel post, & secundum hoc procedatur contra ipsum ad defaltam, & secundum quod inferiūs dicetur plenius de defaltis. Si autem p̄sens fuerit, et essonium omnino dedixerit, tunc refert utrum omnino essonium factum fuerit ante apparitionem in curia, vel post. Si autem ante, bene potest defendere inprimis summonitionem & sursisam, & quod nunquā summonitus fuit. Item utrum essoniatus de malo veniendi, an de malo lecti, ut supradictum est de sum-

¹ "denegatione illius licentiæ
"p̄dicto A.," MS. Rawl. C. 160.

² "tui ipsius," MS. id.

bed and to appear in your said court to make answer to the said B. concerning the said cause according to the law and custom of our realm, you have in your said court denied to him leave to rise from his bed, and because in such denial manifest injustice has been done to the aforesaid A., we have granted to him in your default leave to rise from his bed to make answer to the aforesaid A. concerning the aforesaid land according to the law and custom of our realm, and this we signify to you and to the said court. Witness, &c. And by this it may be seen that the lord of the court and the bailiff may grant to the essoinee leave to rise from his bed, and if such a person, much more the viscount and the county court.

CHAPTER XI.

The four knights, who have been lawfully sent, after many delays have taken place, or forthwith within the first day, come to the place where the essoinee lies, or ought to lie, to view &c., and then they either find him there or they do not find him there. But if they have not found him there at all, and all have together testified to this on the day appointed, then he who ought to be essoined is either present in court or is not present. But if he be not present, then let his land be taken into the hand of the lord the king, either through a great *cape* or a little *cape*, according as the essoin has been made before the tenant has appeared in court or afterwards, and according thereto let proceedings be had against him for a default, and according to what will be said below concerning defaults. But if he be present, and has altogether denied the essoin, then it is of importance whether the essoin has been made before his appearance in court or after it. But if before, he may well contest in the first place the summons and the adjournment and that he had ever been summoned. Likewise whether he has been essoined for sickness on the way or for bed-sickness,

1. Of the office of the four knights in making a view. Of essoins when those sent have come to the place where the essoinee ought to be lying.

f. 356 b. monitionibus. Si autem essonium factum fuerit postquam comparuerit in curia & diem habuerit, diem datū nō poterit dedicere cōtra recordū curiæ. Et unde si postea dedixerit essoniū de malo veniēdi post diē datum in curia, cōcedit p cōsequens defaltā esse factā, et sic amittet seysinā p iudiciū ppter defaltam, et multo fortius si dixerit¹ utrumq̃ essoniū tam de malo veniēdi, qm de malo lecti. Item veniunt milites ad vidēdum & inveniunt eum vagantē p curiā, et per rura, et tunc ad eorum testificationē fiat ut in pximo supra. Item veniunt milites ad vidēdum, & inveniūt eū in lecto sicut decet taliter essoniatū, decalceatū, et sine braccis, & decinetū, vel forte nudum q plus est, cūm fuerit interrogatus, aut confitetur se esse essoniatū, aut omninō dedicit essoniū. Si autē essoniū dedixerit, tunc ad eorum testificationē fiat ut supra. Si autē essoniū cōfiteatur, tunc diligēter inquirant milites de qualitate infirmitatis, et de ejus circūstantiis, & utrum latens & intrinseca, vel in aperto et extrinseca, ut inde respōdere possint si forte fuerint requisiti, & secundum q viderint et judicaverint, dabunt ei malum transiens vel languorē. Si autē adjudicaverint ei malum trāsiens, forte in p̃sentia petētis dabunt ei diē certum in brevi cōphensum, q tunc veniat vel sufficientē p se mittat respōsalē. Ad qm diē si milites venerint, et petēs et tenens, pcedat loquela debito modo. Si autē petens & tenēs cōparuerint, et milites tātum unus vel duo, vel tres et nō quartus, vel forte nullus, si petens cōfiteatur visum rite esse factū, sufficit ejus testimoniū et p hoc

¹ "si dedixerit," MS. Rawl. C.

as above said concerning summonses. But if an essoin has been made after he has appeared in court and has had a day, he cannot deny the appointment of a day f. 356 b. against the record of the court. And hence, if afterwards he has denied the essoin for sickness on the way after a day appointed in court, he concedes as a consequence that he has made default, and so he shall lose seysine by a judgment on account of his default, and much more so, if he has denied both essoins for sickness by the way and for bed-sickness. Likewise the knights come and they find him wandering about his court and his grounds, and then upon their testification let it be done as in the passage immediately preceding. Likewise the knights come to view him, and they find him in bed as becomes a person so essoined without his shoes and without his breeches and ungirt, or by chance naked which is more, when he has been interrogated he either confesses that he has been essoined or he altogether denies the essoin. But if he has denied the essoin, then upon their testification let it be done as above. But if he confesses the essoin, then let the knights make diligent inquiry as to the quality of his illness, and concerning its circumstances, and whether it is latent and internal, or open and external, that they may answer thereupon, if by chance they should be required, and according to what they have seen and judged let them grant to him either a transient illness or languor. But if they have adjudged to him a transient illness, they shall by chance in the presence of the claimant assign to him a certain day comprised in the writ, that he should then come or send a sufficient person to answer for him. At which day, if the knights have come and the claimant and the tenant, let the trial proceed in due manner. But if the claimant and the tenant have appeared, and only one or two knights or three and not the fourth, or perhaps none of them, if the claimant admits that the view has been duly made, his testimony is sufficient, and thereby

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nō multū operatur testificatio militum. Itē si petens venerit ad cōmunē diē, et visores nō, et cognoverit q̄ essoniatus de malo lecti visus fuerit certo die, & q̄ visores dederint ei lāguorē et diē apud Turrim Lond in unū annum et unum diē à die visus sui. Itē dies dabitur petenti ppter suā ptestationē apud Turrim, et se essoniatus tūc nō venerit, tūc revertatur ad iudicium, et pcedatur cōtra milites q̄ veniant ad testificādū, & si venerit forte essoniatus, pcedatur in placito principali, & de hac materia inveniri poterit de terṃ P. añ regis H. xiv. in cōm Nott. et Linc. de Wv. thesaurario¹ Eborum et Wilhelmo de Camera et Letitia uxore ejus. Si autē ad diē illū venerint milites, et testificati fuerint visum, & petēte se offerēte liti nō veniat tenēs, expectato quarto die capiatur terra in manū dñi regis p defaltā, per pvum cape, quia nō poterit tenens essoniū dedicere cōtra recordū militū, sive in curia cōparuerint sive nō. Si autē milites cōparuerint et tenens, et petens nō, tunc offerente se liti tenente recedet quarto die tenens quietus de brevi illo. Itē si milites cōparuerint in prima die, & petens nō, nec tenēs, sed in crastino uterq̄, vel tertio die uterq̄, vel quarto die uterq̄, cū pares sint ptes hinc inde quoad defaltā, nec sit quod aliquis eorum alterius possit imputare defectui, cōpēsetur defalta cum defalta, & pcedat loquela, quia paria delicta mutua cōpensatione tolluntur. Si autem impares sint in defaltis, q̄ si unus cōparuerit in

¹ "Wilhelmo thesaurario," MS. Rawl. C. 160.

the testification of the knights is not of much importance. Likewise if the claimant has come to the common day and the viewers not, and he has acknowledged that the essoinee for bed-sickness has been viewed on a certain day and that the viewers have assigned languor to him and a day at the Tower of London for a year and a day after the day of their view. Likewise a day shall be granted to the claimant on account of his protestation at the Tower, and if the essoinee has then not come, then let a return be made to the judgment, and let proceedings be had against the knights, that they should come to testify, and if the essoinee has by chance come, let proceedings be had in the principal suit: and concerning this matter a case will be found in Easter term in the fourteenth year of king Henry in the counties of Nottingham and Lincoln, concerning Wv. the treasurer of York and William de Camera and Letitia his wife. But if before that day the knights have come and have testified their view, and upon the claimant being present to join issue the tenant does not come, after the fourth day has been awaited let the land be taken into the hand of the lord the king through default by a little *cape*, because the tenant cannot deny the essoin against the record of the knights, whether they have appeared in the court or not. But if the knights have appeared and the tenant, but the claimant not so, then upon the tenant offering himself to join issue the tenant shall retire on the fourth day quit from that writ. Likewise if the knights have appeared on the first day, and the claimant not, nor the tenant, but both of them on the morrow, or both on the third day, or both on the fourth day, since the parties on either side are on a par as regards their default, and there is nothing which one of them can impute to the other by way of failure, let the default be compensated by the default, and let the trial proceed, because like offences are got rid of by mutual compensation. But if they are unequal in their defaults, because one has appeared

primo die, & alius in crastino, tertio, vel quarto die, procedatur ad defaltū secundum quod inferius dicitur de defaltis.

2. Item milites,¹ cū visum fecerint, examinata infirmitate adjudicant essoniato languorē, & dabunt ei diem à die visus sui in unum annum & unum diem apud Turrim London, quòd tunc sit ibi inde respōsurus vel sufficientē p se mittat responsalem, et ad diem in brevi cōtentū veniant corā justiciariis & testātur q viderūt eum essoniātū tali die, & q dederunt ei diē à die visus sui in unum annum & unū diē apud Turrim Lond, quo casu si forte milites discordes fuerint in die dato, iterum mittantur ad vidēdum, & ad dandum certum diem, & iterū ad certificandum visum. Si autē cōcordes fuerint in die dato, diligēter examinentur à justiciariis utrū dies datus à militibus rationabilis sit & legitimus vel non, ut si forte annus fuerit bissextilis, et quo casu si illegitimus fuerit dies, facta examinatione mittantur iterū ad lāguidū, ut dent ei diē legitimū secundū cōsiliū justiciariorū, et iterū veniāt & testētur. Sed sive infirmitas sit lāguor sive nō, quare nō possunt milites capere attornatum, ut p attornatū pcedet loquela, sicut fieri poterit si post annū et diē venire nō possit, potest mittere respōsalē. Respōdeo q nō possunt, quia ad hoc nō sunt missi, et ideo nullam habēt potestatē etiā si essoniatus hoc vellet, nec essoniatus ad hoc arctari poterit q faciat attornatum nisi velit. Et si justiciarii nō examinaverint, erit hoc eis

¹ "Item si milites," MS. Rawl. C. 160.

on the first day and the other on the morrow or on the third day or on the fourth day, let proceedings be had for a default according to what will be explained below on the subject of defaults.

Likewise if the knights, when they have made a view, after an examination of the illness adjudge languor to the essoinee, and shall grant to him a day from the day of their view for a year and a day at the Tower of London, that he be there in order to answer or that he should send a sufficient person to answer for him, and on the day contained in the writ let them come before the justiciaries and let them testify that they have seen the said essoinee on such a day, and that they have granted to him a day from the day of their view for a year and a day at the Tower of London, in which case if by chance the knights are at discord as to the day granted, let them be sent a second time to view, and to grant a certain day, and to certify a second time their view. But if they are in accord upon the day granted, let them be diligently examined by the justiciaries whether the day granted by the knights is a reasonable day and a lawful day or not, as if by chance the year should be Leap Year, and in which case if the day shall be unlawful, after an examination has been made let them be sent a second time to the languid person, that they may grant to him a lawful day according to the advice of the justiciaries, and let them come again and testify. But whether the illness be a languor or not, why cannot the knights accept an attorney, so that the trial may proceed through an attorney, as may be done, if after a year and a day he cannot come, he may send a person to answer for him. I answer that they cannot do so, because they are not sent for that purpose, and therefore they have no power even if the essoinee should wish it, nor can the essoinee be constrained to this, that he should appoint an attorney unless he wishes it. And if the justiciaries have not examined into it,

2.
When the knights have come to testify to languor. f. 357.

imputandū si essoniatus surrexerit die illegitimo sibi p milites dato, militibus vero non, ppter simplicitatē & imperitiā suam, essoniato nō, quia obtēperat iudicatis. Si autē justiciarii cūm examinaverint, iterum miserint, & milites nō viderint, nec petens versus milites fuerit psecutus, tunc nec justiciariis imputari poterit, nec essoniato, sed militibus tātū, & petēti. Si autem iudex examinaverit, & miserit, & milites missi viderint, & diē dederint, tunc si essoniatus tardius venerit, vel si forte erraverit essoniatus in die suscipiendo, quia malè intellexit diē suum, hoc sibi imputare debet, cūm quatuor milites inde habent recordū. Et q recordum habeāt pbat, cūm sint quasi justiciarii in hoc casu, nec cōtra assertionem eorum admittitur aliqua testificatio in cōtrarium, cūm petens se tenuerit ad defaltā, ex respōso W. de Ralegh & G. de Segrave facto Richardo Duket, qui expetiit eorum cōsiliū in hoc casu. Vel si maturius venerit qm deberet, hoc sibi poterit imputari cūm ipse solus sit in culpa, licet aliquando actum fuerit in contrarium, ubi essoniatus obtemperat iudicatis, & ppter errorē militum in expressione diei, dānum sentiat, cūm nō sit in culpa, ut si in die dando dicāt essoniato.

3.
Qualiter
dandus sit
dies et sub
quibus
verbis.

Damus tibi diē à die isto visus tui in unum annum & unum diē, hoc sufficit. Si autē diē expresserint, sic dicendo: damus tibi diē à die isto & ita q tali die cōpareas apud Turrin, si diem dederint legitimum in utroque casu erit eis obtemperandum, scilicet q ad diē expressum veniat apud Turrin, & erit talis dies esso-

it will have to be imputed to them, if the essoinee has risen from his bed on an unlawful day assigned to him by the knights, but not to the knights, on account of their simplicity and inexperience, not to the essoinee, because he obeys what is adjudged. But if the justiciaries when they have examined into it, have sent a second time, and the knights have not made a view, and the claimant has not sued against the knights, then it cannot be imputed to the justiciaries, nor to the essoinee, but to the knights alone, and to the claimant. But if the judge has examined into it, and has sent them, and the knights, who have been sent, have viewed and granted a day, then if the essoinee has come later, or if by chance the essoinee has erred in selecting a day because he has badly understood the day appointed to him, he ought to impute this to himself, since the four knights have a record thereof. And that they have a record is proved, since they are as it were justiciaries in this case, nor is any testification to the contrary admissible against their assertion, when the claimant has put himself in default, [as appears] from the reply of William de Raleigh and Gilbert de Segrave made to Richard Duket, who requested advice from them in this case. Or if he has come earlier than he ought, this may be imputed to him, since he alone is in fault, although it has sometimes been done to the contrary, where the essoinee obeys what has been adjudged, and on account of an error of the knights in their expression of the day suffers damage, since he is not in fault, as if in granting a day they should say to the essoinee :

We grant to you a day from this day of your view for a year and a day, this is sufficient. But if they have expressed the day, in saying thus : we grant to you a day from this day, and so that on the said day you should appear at the Tower, if they have granted a lawful day in either case they must be obeyed, to wit, that on the express day he should come to the Tower,

3.
How a day
is to be
granted
and in
what
words.

f. 357 h.

niati legitimus. Si autem in diei expressione erraverint milites, nō est necesse essoniato q ipse erret, quia p hoc posset esse in defalta ppter errorem militum, quāvis ipse nō esset in culpa. Et ideo cōpareat ad diem legitimum ppter verba generalia, p quæ datur ei dies à die visus sui ad unum annum & unum diem, & expressio diei habeatur pro nulla. Sed quid si essoniatus obtemperaverit militibus errantibus, de gratia & consilio curiæ poterit ei subveniri. Cū autem venerint coram iusticiariis ad testificandum languorem, oportet quōd omnes veniant simul (ut prædictum est) ad testificandum, nisi ita sit q petens præsens sit, & concedat visum factum legitimè & diem datum. Quo casu sufficit testificatio duorum vel triū, cum testificatione ipsius petentis, & sic fiat irrotulatio, C. D. E. F. quatuor milites missi ad talem, qui se essoniavit de malo lecti versus talem de placito terræ, veniunt & testificātur q viderunt eum tali die, & dederunt ei languorem ex certa causa ppter talem infirmitatem, scilicet, si super hoc fuerint requisiti, & etiam dederūt ei diem à tali festo in unum annum & unum diem, vel à tali die ante tale festum vel post, vel tertio vel quarto die kalendas Aprilis, vel quarto kalendas, vel quarto idus in unū annum sine expressione et unum diem, et sufficit, vel cum expressione secūdum q supradictum est. Et quo casu, facta sic testificatione, dabitur idem dies petenti si præsens fuerit, vel per essoniatores suum si fuerit essoniatus. Et eodem modo participibus si præsentes fuerint, & sic erit tota

and such day shall be the legitimate day for the essoinee. But if the knights have made an error in the expression of the day, it is not necessary for the essoinee to make the same error, because he may thereby be in default on account of the error of the knights, although he be not himself in fault. And accordingly let him appear on the legitimate day on account of the general words, whereby there is granted to him a day from the day of his view up to one year and one day, and let the expression of a day be held to be null. But if the essoinee has obeyed the knights in their error, by the grace and upon the advice of the court he may have succour afforded to him. But when they have come before the justiciaries to testify to languor, it is incumbent that they should all come together (as above said) to testify, f. 357 b. unless it be that the plaintiff is present and that he admits that a view has been made legitimately and a day granted. In which case the testimony of two or of three is sufficient with the testimony of the plaintiff himself, and let the enrolment be thus: C. D. E. F., four knights sent to so-and-so, who has essoined himself for bed-sickness against so-and-so in a suit for land, come and testify that they saw him on a certain day, and granted him languor on account of a certain infirmity, to wit, if they have been required to speak upon this matter, and they have granted to him a day from such a festival up to a year and a day, or from such a day before such a festival, or after, or on the third or the fourth day before the kalends of April, or on the fourth before the kalends, or on the fourth before the ides for a year without expression and a day, and it is sufficient, or with expression according to what has been said above. And in which case, upon the testification having been thus made, the same day shall be granted to the plaintiff, if he be present, or through his essoiner, if he has been essoined. And in the same manner to parceners, if they be present, and thus the whole cause will

loquela in suspenso usq̃ ad annū & diem, & sic desinet loquela esse in iudicio, & in curia, donec post annū & diem p̃ constabularium à Turri iterum ad curiam remittatur, nec iterum revocari poterit ad curiam à iusticiariis aliquo casu, sine utriusq̃ partis voluntate. Si autem participes in testificatione languoris forte præsentes nō extiterint, vel cūm essoniati fuerint, forte essoniū non jacuerit, quia priūs se essoniavit¹ (offerente se liti petente quarto die) p̃cedatur cōtra eos ad defaultā, sicut infra dicitur de defaultis, cūm sint p̃ticipes, & quia res petita patitur divisionē, licet ab initio nō fuerit divisa. Et idē erit si fuerit divisa inter cohæredes. Amittere enim poterunt participes per defaultam sine participibus, quāvis sine p̃ticipibus non teneantur respōdere. Si autē vir & uxor implacitentur, qui simul & in solidum tenent unicam rem, cūm sint quasi unum corpus, quamvis diversæ animæ & nō p̃ticipes, quia res inter eos non patitur divisionem, cūm unus eorū essoniatus fuerit de malo lecti, & alter defaultam fecerit, p̃cedi poterit statim ad defaultam contra absentem, sed ad iudiciū p̃cedi non possit ante p̃sentiam utriusq̃. Suspēditur igitur iudiciū quousq̃ essoniatus iterū in iudicio & in curia cōparuerit, quia unius ipsorū defaulta utriq̃ erit damnosa. Item esto q̃ petens p̃sens non fuerit die quo fit testificatio, nec per se, nec p̃ essoniatores ut diē suū recipiat, nec primo die nec secundo, nec tertio, nec quarto, nec ulterius, sufficit tamen si aliquo die infra annū & diē. Sed quid si post annū & diem petat tenens iudiciū de

¹ "se essoniaverint," MS. Rawl. C. 160.

be in suspense for a year and a day, and so the cause will cease to be in judgment and before the court until after a year and a day it be remitted again to the court by the constable at the Tower, nor can it be recalled to the court by the justiciaries in any case without the willingness of both parties. But if the parceners have not been present at the testification of languor, but when they have been essoined by chance the essoin has not held good, because they have essoined themselves previously (the claimant presenting himself to join issue on the fourth day) let proceedings be taken against them for a default, as shall be said below concerning defaults, when there are parceners, and because the thing claimed admits of division, although it has not been from the beginning divided. And the same shall be done, if it has been divided amongst coheirs. For parceners may lose by default without their parceners, although they are not bound to answer without their parceners. But if a man and his wife are impleaded, who hold together and in a lump a single thing, since they are as it were one body, although different souls and not parceners, because the thing does not admit of division between them, when one of them has been essoined for bed-sickness and the other has made default, proceedings may be had forthwith for a default against the absent one, but cannot go on to judgment before the presence of both. The judgment therefore is suspended until the one who has been essoined has appeared again in judgment and in the court, because the default of one of them will be damaging to both. Likewise let it be that the plaintiff has not been present on the day, on which the testification is made, neither by himself, nor by an essoiner, to have a day appointed to him, neither on the first nor on the second nor on the third nor on the fourth day nor on a further day, it suffices however if on some day within a year and a day. But if after a year and a day the tenant claims

defalta petentis, nihil capiat per defaltam, facta compensatione ut prædictum est.

CAP. XII.

1. Qualiter
essoniatus
custodire
debeat
languorem
et qualiter
se tenere.
f. 358.

Qualiter autem essoniatus custodire debeat languorem videndum, & sciendum quòd (secundum quòd supradictum est) decinctus, & sine braccis, & discalceatus se tenere debet in lecto. Alicubi tamen poterit indui vestimentis si voluerit: non debet exire cameram vel domum in qua jacuerit publicè, nec vagari per curiam suam in cōspectu populi, nec exire de curia ut vagat¹ per rura, vel longius incedat, ne à petente interceptus seysinam suam amittat per defaltam, quia si petens scit eum extra curiam suam, vel in curia sua forte ipsum inveni-
nerit, immittere poterit in eum manus, cum hac tamen discretione.

2. Si essonia-
tus inven-
tus fuerit
vagans,
qualiter
debet
arrestari.

Debet tamen petēs secum assumere si fieri possit servientem dñi regis, simul cum probis & legalibus hominibus vicinis, & cum clamore ipsum arrestare, ita quòd nullam faciat ei violentiam. Et quo casu, habeat serviens domini regis recordum simul cum testimonio legalium & proborum hominum. Si autem tales secum statim non habuerit, veniat petens cum suis & essoni-
atū arrestet cum utesio et clamore, ut ad hoc conveniant probi homines vicini, ut si opus fuerit, testificari possunt quid viderunt. Mittre etiā debet ppter coronatores, & servientem domini regis, ut simul cum probis hominibus testificari possint qualiter fuerit interceptus, quorum recordo stabitur, donec essoniatus per manifestas p̄bationes docuerit contrarium. Poterit enim

¹ "ut vaget," MS. Rowl. C. 160.

judgment from the default of the claimant, let him take nothing through the default, compensation having been made as aforesaid.

CHAPTER XII.

But we must see in what way an essoinee ought to observe languor, and it is to be known (as said above) he ought to keep himself in bed ungirt and without his breeches and without his shoes. But he may occasionally put on his clothes if he wishes; he ought not, however, to go publicly out of the chamber or out of the house in which he lies, nor wander about his court in the sight of the people, nor go out of his court to wander about the fields or to take a longer walk, lest upon being intercepted by the claimant he should lose his seysine by default, because if the claimant knows that he is outside his court, or has found him by chance in his court, he may lay hands upon him, with this discretion however:

The claimant ought to take with himself, if possible, a king's serjeant, together with some honest and loyal neighbours, and with a cry arrest him, so that he do no violence to him. And in which case let the king's serjeant have a record together with the testimony of the loyal and honest men. But if he cannot have forthwith such persons to accompany him, let the claimant come with his own men and arrest the essoinee with hue and cry, that the honest men of the neighbourhood may assemble thereupon, and if it should be necessary, may testify what they have seen. But he ought to send besides the coroners and a serjeant of the lord the king, that they may be able to testify with the honest men, in what manner he was intercepted, by whose record the matter shall stand, until the essoinee has shown the contrary by manifest proofs. For the serjeant of

1.
In what
way an
essoinee
ought to
observe
languor and
in what
way to
keep him-
self.
f. 358.

2.
If an es-
soinee has
been found
at large,
how he
may be
arrested.

serviens dñi regis simul cum testimonio pborum hominum testificari qualiter essoniatum, & in quo loco arrestatum invenerit, sed utrum sponte ibi venerit, vel contra voluntatē adductus, testificari nō possunt. Poterit enim essoniatu docere contrariū sic, & dicere quòd cū esset tali die in domo sua tali, apud talē locum & in lecto suo sicut ille cui fuit languor adjudicatus, & in pace domini regis, venit ibi ipse talis petens, & nequiter & in felonia extraxit eum à domo sua, & à lecto suo, & in roberia abstulit ei tantum, contra pacem dñi regis, & sic offert &c. Et quo casu, pcedendum erit in modum appellati, & terminabitur negotium per duellum, vel per inquisitionem, & secundum quod iudicium fecerit p uno vel pro alio, amittet unus eorum imperpetuum. Tenens, quia stulte surrexerit, vel petens, quia malitiose essoniatum extraxerit, et eadē ratione qua lucrari voluerit, eadē ppter malitiam amittat. Cū autem quis essoniatu ita per legem terræ arrestatus fuerit, & non p malitiā, si petens se tenuerit ad defaltam, & iudiciū petierit de defalta, firmiter se teneat ad defaltam, ne defaltæ tacitè renunciat p consensum. Tacitè enim renunciare poterit ita: si diem amoris ceperit cum tenente, sive datus fuerit dies pce tenentis, vel prece petentis, vel pce utriusq̃. Dabitur enim dies sic. Dies datus est tali petenti, & tali tenenti, de placito terræ usque talem diem prece partium. Et ex quo petens per hoc innuit quòd placitum sit inter eos, & sic videtur tacitè renunciassse defaltæ, & videtur placitum redintegratum quod fuit ex

the lord the king may testify together with the testimony of the honest men in what manner and in what place he found the essoinee arrested, but whether he came there spontaneously or was brought thither against his will they cannot testify. For the essoinee may show the contrary thus, and say that when he was on such a day in his own house at such a place and in his own bed, as a person who has been adjudged to have a languor, and in the peace of the lord the king, the said claimant himself came and wickedly and feloniously dragged him out of his house and out of his bed, and in robbery took so much from him against the peace of the king, and so he offers &c. And in which case proceedings will have to be taken after the manner of a criminal charge, and the business will be determined by a duel or by an inquest, and according as judgment shall have been for the one or for the other, one of them shall lose in perpetuity. The tenant, because he has foolishly left his bed, or the claimant because he has maliciously dragged out of bed an essoinee, and in the same way in which he wished to gain, let him in the same way lose on account of his malice. But when a person essoined has been thus arrested by the law of the land and not by malice, if the claimant has kept himself to a default and has requested judgment for a default, let him hold fast to a default, lest he should renounce it tacitly by consenting. For he can tacitly renounce in this manner: if he has taken a day of love together with the tenant, or if such a day has been given with the assent of the tenant or at the prayer of the claimant or with the assent of both parties. For a day shall be given in this manner. A day has been given to so-and-so the claimant and to so-and-so the tenant, concerning a suit for land up to such a day at the prayer of the parties. And since the claimant hereby implies that there is a suit between them, and so he seems to have tacitly renounced a default, and the suit seems to have

parte tenentis desertum. Eodem modo videtur tacite renunciassse tenens defaltæ, si sibi perquisiverit de amovenda loquela ab uno iudicio ad alium per pone. Continetur enim ibi, pone coram justiciariis, &c. Loquelam, quæ est in comitatu vel coram nobis vel coram talibus justiciariis, per hoc enim quod dicitur in impetratione
 f. 358 b. propria loquela quæ est, videtur per hoc innuere quòd loquela sit redintegrata ut prius, & sic esse poterit in pluribus causibus consimilibus. Et si ad hoc autem agat petens, quòd iudicium transferatur de defalta ab uno iudicio ad aliud, vel hoc sit factum iudiciū¹ et nō petentis, vel q dies datur de audiendo iudicio suo de defalta, ppter difficultatē iudicii, & ita q ibi sit factū justiciarii & nō ptis, aliud erit, quia per hoc nō renūciat petens defaltæ tacitè neq̃ expressè. Cū autem sic arrestatus fuerit tenens essoniatus cum testimonio sufficienti, ut p̃dictum est, non erit ulterius ducendus ab aliquo, nec ad comitatum nec ad castrum, nec alibi, sed statim dimittendus abire liberè quo voluerit, qui cū dimissus fuerit abire, ubicunq̃ divertit iterū ad lectum vel alibi, statim ad querelā petentis sumōneatur venire ad curiam, ubi loquela prius fuit, ad audiendum iudiciū suū de defalta, & quare surrexerit postq̃m languor fuerit adjudicatus ei p tale b̃re de iudicio. In sumā vero notandū, q postq̃m quis essoniatus fuerit de malo lecti, postq̃m in curia dñi regis cōparuerit q essoniū dedicere nō possit, nō possit impunè, q nō sit in defalta, surgere sine visu legitimo

¹ "iudicis," MS. Rawl. C. 160.

been renewed, which had been abandoned on the part of the tenant. In the same way the tenant seems to have renounced tacitly a default, if he has made application on his own behalf to remove the cause for argument from one judgment to another by a *pone*. For it is contained therein,—Put before the justiciaries &c. the cause which is in the county court, or before us, or before certain justiciaries, for inasmuch as in the suing out a cause which is existing is spoken of, he seems thereby to imply that the cause has been renewed as before, and so it may be in several similar cases. But if the claimant works for this, that the judgment be transferred concerning the default from one judgment to another, or if this be the act of the judge and not of the claimant, or that a day is given for hearing his judgment concerning the default, on account of the difficulty of the judgment, and so that it be the act of the justiciary and not of the party, it will be different, for the claimant does not thereby renounce a default either tacitly or expressly. But when the tenant essoince has been thus arrested with a sufficient body of witnesses, as aforesaid, he will not have to be further conducted by any one, neither to the county court nor to the castle, nor elsewhere, but he is forthwith to be dismissed to go away freely wherever he may wish, who when he has been dismissed to go away, wherever he lodges himself whether again to go to bed or elsewhere, let him be forthwith summoned on the complaint of the plaintiff to come to the court, where the cause has first been spoken to, to hear his judgment concerning the default and wherefore he has risen from his bed after languor had been adjudged to him, by such a writ for judgment. But in sum it is to be noted, that after a person has been essoined for bed-sickness after he has appeared in the court of the lord the king so that he can not gainsay his essoin, he cannot rise from his bed with impunity so as not to be in default without a view has been legiti-

f. 358 b.

facto, s. p tales qui visum facere possunt, ut supra, vel sine licētia: & generaliter licētiā habere poterit, sive visus fuerit sive nō, & sive languor ei adjudicatus fuerit sive nō, quousq̃ visus legitimè testatus fuerit, & ita q petens diē receperit apud Turrim Lond. Et ex-tunc nulla dari poterit licentia surgēdi, quia justiciarii jurisdictionē nō habent, nec reverti poterit loquela itērū ad iudicium, nisi per officium constabularii. Cō-tingit quandoq̃ q ille qui à lāguore surrexit, non est inventus in loco in quo se essoniavit nec extra ubi possit arrestari, quo casu, ad querelam petētis fiat breve vicecomiti q assumptis secum quatuor militibus, vel quibusdam ex illis qui eum viderunt, in ppria persona sua accedat ad locum, in quo p̃dictus essonia-tus jacuisse debuit, & si ipsum in languore suo inve-nerit, sicut fuit ei adjudicatus vel nō, & secundū q eum invenerit vel nō, fiat breve vicecomiti sub tali forma.

3. Rex vicecomiti salutem. Ostensum est nobis ex parte A. q cū B. in curia nostra apud West. vel coram justiciariis nostris itinerātibus vel in comitatu tali essoniasset se de malo lecti versus talē de placito terræ apud talē locū in comitatu tali. Et ibidē lāguor esset adjudicatus ei p quatuor milites per p̃ceptum nos-trū ad ipsum videndū transmissos, idem B. infra lan-guorem suum contra consuetudinē regni nostri surrexit, & à domo sua in qua languidus jacuisse debuit, exivit, & à ptibus illis recessit, et se transtulit ibi vel ad alium comitatū. Et ideo tibi p̃cipimus q statim visis literis istis omni occasione &c., assumptis tecū p̃dictis quatuor militibus, vel duobus ex illis, si omnes habere

3. Breve, si
essoniatus
surrexerit
sine licen-
tia, quod
milites
mittantur
ad ipsum
videndum,
si ita sur-
rexerit vel
non post
languorem
ei adjudi-
catam.

mately made, that is, through such persons who may make a view, as above, or without a license: and generally he may have a license, whether he has been viewed or not, and whether languor has been adjudged to him or not, as long as the view has been legitimately testified, and so that the claimant has received a day at the Tower of London. And from that time no license to rise from his bed can be given, because the justiciaries have not jurisdiction, nor can the cause be restored again to the court for judgment, except through the office of the constable. It happens sometimes that he who has got up after a languor, is not found in the place where he essoined himself, nor outside it in a place where he can be arrested, in which case at the complaint of the plaintiff let a writ go to the viscount that he having associated with himself four knights or some of those who have viewed him, should go in his own person to the place, where the essoinee aforesaid ought to have lain, and if he shall find him in his languor, whether it has been adjudged to him or not, and according as he has found him or not, let a writ in this form go to the viscount.

The king to the viscount greeting. It has been shown to us on the part of A. that when B. in our court at Westminster, or before our justiciaries itinerant, or in such a county court, has essoined himself for bed-sickness against so-and-so in a suit for land at such a place in such a county, and a languor was there adjudged to him by four knights sent to view him through our precept, the said B. within the time of his languor against the custom of our realm has got up from his bed, and has gone out of his house, in which he ought to have lain languid, and has withdrawn from those parts, and has transferred himself there or to another county. And accordingly we enjoin you that immediately upon seeing these letters on every occasion &c., having associated with you four knights, or two of them, if you cannot

A writ, if the essoinee has got up without licence, that knights be sent to view him, if he has so got up or not after a languor has been adjudged to him.

non possis, in ppria persona tua accedas apud talem locū, & videas si idem B. ibi sit in lecto & in lāguore suo sicut ei fuit adjudicatus, vel nō. Et si ibi eū inveneris, hoc scire facias justiciariis nris apud West. per literas tuas sigillatas. Et si ibi inventus nō fuerit, tunc venire facias prædictos milites, qui ibi tecum interfuerint, corā præfatis justiciariis nostris tali die ad certificandum inde justiciarios nros. Et interim p legales & discretos homines, tam ballivos tuos qm p alios, insidiari facias eidē B. si redierit de ptibus talibus vel nō. Et si redierit, & invētus fuerit extra talē locū ubi languor fuit ei adjudicatus, tūc facias eum arrestari, ita q habeas corpus ejus coram præfatis justiciariis nris ad talē terminum ad respondendū eidem¹ quare &c. vel ad audiendū recordum vel judiciū suū de loquela quæ fuit coram eisde justiciariis nostris inter pdictos A. & B. de tanto terræ cum pertinentiis in tali villa. Et unde idem talis essoniavit se de malo lecti versus pdictum talem, & ita q languor ei fuit adjudicatus, & sine licētia surrexerit à lāguore, ut idem talis dicit, & habeas ibi &c. Teste &c.: & ita possunt istæ ultimæ clausulæ vel adjungi brevi de inquisitionibus,² vel fieri per se.

f. 359.

CAP. XIII.

1. In fine anni post languorem, cū essoniatus convalescerit de languore, videndū erit qualiter venire debeat apud Turrin, & quando, vel mittere responsalem, eo forte q jam languor versus sit in morbum sonticū, & incurabilem, q venire non possit per se. Itē quando debeat surgere à lecto ægritudinis, & qualiter, & per

Qualiter
essoniatus
venire de-
bet ad
Turrin
London. et
quando,
vel mittere
responsa-
lem.

¹ "eidem A.," MS. Rawl. C. 160. | ² "inquisitione," MS. id.

have all, you should go in your own person to such a place, and see if the said B. is there in bed, and in his languor, as was adjudged to him, or not. And if you shall find him there, make this known to our justiciaries at Westminster by your sealed letters. And if he has not been found there, then cause the aforesaid knights, who were present there with you, to come before our said justiciaries on such a day in order to certify our said justiciaries. And meanwhile cause certain loyal and discreet persons, as well your bailiffs and others, to lie in wait for the said B., if he shall return to those parts or not. And if he shall have returned and has been found outside such place in which a languor was adjudged to him, then cause him to be arrested, so that you present his body before our aforesaid justiciaries at such a term to answer to said A. wherefore &c., or to hear the record or his own judgment in the cause which was before our said justiciaries between the said A. and B. concerning so much land with its appurtenances in such a vill. And whereon the said so-and-so has essoined himself for bed-sickness against so-and-so aforesaid, and so that a languor was adjudged to him, and he has risen up from his languor without a licence, as so-and-so says, and have there present &c. Witness &c.: and so these short little clauses may be either added to a writ for an inquest or be inserted by themselves. f. 359.

CHAPTER XIII.

At the end of the year after the languor, when the essoinee has got well of his languor, it is to be seen how he ought to come to the Tower of London, and when, or else to send a responsible person, on the grounds perhaps that the languor has already turned into a fatal or incurable malady, so that he cannot come in person. Likewise when he ought to rise from his bed of sickness, and in what manner, and by what days-journeys he

1. In what way an essoinee ought to come to the Tower of London or to send a responsible person.

quas dietas venire debeat ad Turrin. Et sciendū q cūm essoniatus à languore convaluerit & in propria persona venire possit, primò debet cōputare dietas rationabiles secundū q plenè convaluerit, vel secundum quod per languorē extenuatus fuerit & debilitatus, ita q commodè venire non possit. Sed postq̄m à lecto surrexerit, non moretur in domicilio suo ultra unam noctē, & sic inde pficiscatur per rationabiles dietas ad Turrin, ita q per viam nusq̄m moram faciat ultra unam noctem, & q sit apud Turrin ultimo die anni naturalis, qui dicitur dies excrescens, & hora cōgrua placitandi.

2.
Qualiter sit
annus bis-
sextilis.

Sed videndū erit qualiter dies ille sit accipiendus tempore bissextili, ppter duos dies qui sub eodē signo & eadem litera cōputantur, quorū unus (qui dicitur dies excrescēs) determinat & finit tempus quatuor annorū p̄cedentium, & in eo computabilis est inter dies ejusdē tēporis p̄teriti qui sunt mille & quadrīgēti, & faciūt quatuor annos minores, & quibus adjicitur unus dies qui colligitur ex quatuor quadrīgētis, ut faciat p̄dictos quatuor annos plenos & majores, & dicitur dies excrescens, & cōputandus erit inter tēpora & dies p̄dictorū quatuor annorū p̄cedentiū, & qui dicitur dies legitimus cōparendi quolibet anno apud Turrin. Et eodē modo in anno bissextili sicut in aliis tribus annis p̄cedentibus. Est etiam alius dies sub eadē litera qui est caput & principium aliorū quatuor annorū subsequentiū, qui si cōputandus esset infra tempora p̄dictorū quatuor annorum p̄cedentium, ratione alicujus quadrantis sive quartæ, sublato de medio & non computato die excrescente, sic esset dies comparendi apud Turrin in sexagesimo septimo die, q esse non debet, cūm ille dies excrescens cōputabilis sit infra tempora

ought to come to the Tower. And it is to be known when the essoinee has got well of his languor and can come in his own person, he ought to compute reasonable days' journeys according as he has got thoroughly well, or according as he has become thin and weak by the languor, so that he cannot conveniently come. But after he has risen from his bed, let him not delay in his domicile beyond a single night, and so let him proceed by reasonable days' journeys to the Tower, so as not to delay on the road anywhere longer than a single night, and that he be at the Tower on the last day of the natural year, which is called the excrescent day, and at the usual hour of hearing suits.

But it is to be seen in what manner that day is to be accepted in a bissextile time on account of two days, which are computed under the same sign and under the same letter, of which one (which is called the excrescent day) determines and finishes the time of the four preceding years, and therein is computable amongst the days of the said past time, which are one thousand and four hundred, and make four minor years, and to which is added one day which is collected from the four four hundred days in order to make the aforesaid four years full and major, and it is called the excrescent day, and will have to be computed amongst the times and the days of the aforesaid four preceding years, and which is called a legitimate day of appearing in every year at the Tower. And in the same way in a bissextile year as in the other three preceding years. There is also another day under the same letter, which is the head and commencement of the other four years following, which if it were to be computed within the times of the four years preceding by reason of a certain quarter or fourth part, the excrescent day having been taken out of the midst, and not being computed, the day of appearing at the Tower would thus be on the sixty-seventh day, which ought not to be, since the excrescent day is computable

2.
In what
manner the
year be-
comes bis-
sextile.

quatuor annorū p̄cedentiū, ratione illius quadrantis sive quartæ, & sic in anno bissextili erit ille dies legitimus cōparendi. Et ita quòd in anno bissextili plures dies non contineantur qm̄ trecenti & sexaginta sex, sicut in aliis annis non bissextilibus. Et ita uterq̄ dies sub
 f. 359 b. eadem litera sit comprehensus, quia sic subductus¹ sicut in anno bissextili sicut in anno minori terminat tempus quatuor annorum p̄cedentium, & principium dat tempus quatuor annorum subsequentium, & ita eodem die desinit annus p̄cedens propter sex horas, & incipit eodem die annus sequens propter octodecim horas, quarū unus² terminat & etiam idem principium dat, & computabiles sunt & non sunt computabiles, diversis tamen respectibus. Ille vero dies excrescens, qui non est computabilis ea ratione propter necessitatem ad vitandum illud inconueniens, ne festum Natalis Domini celebretur in estate & Nativitas Sancti Johannis Baptistæ in hyeme, quod contingere posset infra quingentos vel sexcentos annos, & etiam ita contingeret intemperies hyemalis in signis estivalibus. Et ad majorem evidentiam aliquid dicamus de anno, scilicet quid sit annus, & quis dicatur major annus, & minor. Et ratio quare dies adjungatur anno minori. Annus est mora motus quo summus planeta pervolvat circum. Annorum autem quidam sunt majores, quidam minores, secundum brevitatem vel productionem circum, & secundum velocitatem planetæ in suo circulo. Item annorum: alius solaris, alius lunaris, alius artificialis, alius naturalis, alius usualis. Naturalis est illud spatium quo suum sol pervolvat circum, & fit ex trecentis sexaginta & quinque diebus & uno quadrante sive quarta unus diei, scilicet ex sex horis. Hora au-

¹ "quia sic subductus," down to "octodecim horas," omitted MS. Rawl. C. 160.

² "quorum unus," MS. id.

within the times of the four years preceding by reason of the quarter or fourth part, and so in a bissextile year that day will be the legitimate day of appearing. And so that in a bissextile year there are not contained more than three hundred and sixty-six days, as in other years that are not bissextile; and so either day becomes f. 359 b. comprised under the same letter, because being thus subtracted as in the bissextile year, as in a minor year it terminates a time of four preceding years, and supplies a commencement of four years following, so on the same day the preceding year ceases by reason of the six hours, and the following year begins by reason of the eighteen hours, of which one terminates and the same also supplies a commencement, and they are computable and are not computable, in different respects however. But the excrescent day, which is not computable for this reason, for the sake of avoiding the inconvenience lest the festival of the Nativity of our Lord should be celebrated in the summer and the Nativity of St. John Baptist in the winter, which might happen within five hundred or six hundred years, and so that the climate of winter would occur in the summer signs. And for greater clearness let us say something concerning the year, to wit, what a year is, and what is called a greater and what a smaller year. And the reason why a day is added to a smaller year. A year is the delay of the motion with which the highest planet completes a circle. But some years are greater, some are smaller, according to the shortness or the prolongation of the circles, and according to the velocity of the planet in its circle. Likewise of years one is solar, another is lunar, another is artificial, another is natural, another is usual. A natural day is that space in which the sun completes its circle of revolution, and it consists of three hundred and sixty-five days and a quarter or a fourth part of one day, to wit, of six hours. But an

tem fit ex quadraginta momentis, & sic fit dies ex novem millibus & sexcentis momentis.¹ Usualis annus qui dicitur annus minor, stat ex trecentis sexaginta & quinque diebus, ubi ultimus dies non est legitimus comparendi secundum quosdam. Major vero constat ex trecentis sexaginta & sex diebus, ita ut minutæ neglectæ per tres annos præcedentes resumantur cum minutiis quarti anni ad perficiendum unum diem integrum, & iste dies sic excrescens appellatur bissextus, et annus in quo contingit dicitur bissextilis, & qui quidem omni tempore legitimus est ad cōparandum, scilicet in sexagesimo sexto die in anno bissextili, sicut in aliis annis, sed in sexagesimo septimo (sicut dicunt quidam, sed non bene ut videtur). Dicitur etiam bissextus eo quòd inscribitur sexto kalendas Martii, ubi duo dies computantur super unam literam, scilicet F., quia colligitur iste dies ex minutiis quatuor annorum. Et ne putet illum quis incipere in uno anno & terminari in quarto anno, proponatur annus incipiens manè, ille terminabitur revoluto circulo anni in meridie, ubi incipiente secundo anno ille secundus dies terminabitur ad noctem eadem ratione, tertius ad mediam noctem, quartus ad auroram, ita quòd bissextus constat ex quatuor quartis simul sumptis, & ita computatur nox sequens cum die præcedente pro uno die artificiali. Si autem fiat computatio anni lunaris recte dicendo per literas è contrario, semper dies præcedit et nox subsequitur. Et ideo vice versa per talem computa-

¹ "constat ex ix. et lx. momentis," MS. Rawl. C. 160, et MS. Regium 9. E. xv; "constat ex no-

"vem centum et lx. momentis," MS. Crewe. See Introduction.

hour consists of forty moments, and so a day consists of nine thousand and six hundred moments.¹ The usual year is that which is called the smaller year, it consists of three hundred sixty and five days, where the last day is not a legitimate day of appearing according to some. But a greater year consists of three hundred and sixty-six days, so that the minutes neglected during the three preceding years be resumed with the minutes of the fourth year to make up one whole day, and this day thus excrecent is called *bissexthus*, and the year in which it occurs is called *bissextilis*, and which is at all times legitimate for appearing, to wit, on the sixty-sixth day in the bissextile year, as in other years, but in the sixty-seventh (as some say, but not rightly as it seems). For the day is called *bissexthus* because it is inserted in the sixth of the calends of March, where two days are computed under one letter F., because that day is made up of the minutes of four years. And lest any person should suppose it to begin in one year and to be terminated in the fourth year, let a year be proposed commencing in the morning, it will be ended upon a revolution of the circle of the year in the middle of the day, when at the commencement of the second year that second day will terminate at night in the same way, and the third day at midnight, and the fourth day in the morning, so that the day termed *bissexthus* consists of four quarters taken together, and so the following night is computed with the preceding day as one artificial day. But if a computation be made of a lunar year, strictly speaking, through letters contrariwise, the day always precedes and the night follows. And therefore conversely through such a computation the natural

¹ This is evidently a misinterpretation of the numerals in the MS. which the editor of Tottell's text had before him, as the multiplication of the twenty-four hours of the

artificial day by forty moments, the equivalent of one hour, results in a day of nine hundred and sixty moments, instead of nine thousand six hundred moments.

f. 360. tionem incipiat dies naturalis in aurora, & terminetur vice versa (ut supra). Ex præcedentibus igitur manifestè liquet q in sexagesimo sexto die debeat essoniatuſ comparere apud Turrim & non maturiùs, ne sit in defalta eo q languorem rite non observaverit. Item non tardiùs qm in sexagesimo sexto die secundū eosdē ne sit in defalta, eo quòd diem suum sibi datum apud Turrim non observaverit. Igitur secure poterit comparere sexagesimo sexto die, scilicet primo post annum naturalem, qui sub se continet annū minorē usualem, & unū diem tam in anno bissextili qm aliis tribus annis pcedentibus, quia in hoc nō differunt in aliquo. Circulus vero anni usualis sive solaris fit ad modum et ad similitudinē colubri sine cauda, nec erit annus integer, nec capiti adjungi poterit corpus q est annus usualis et constat ex trecētis et sexaginta quinq diebus, nisi adjungatur ei cauda. Cauda vero dici poterit sex horæ q̄ deficiunt, ut ex anno usuali qui sub se continet trecētos & sexaginta quinq dies et sex horas, scilicet quartā ptem diei, fiat annus naturalis, qui sub se cōtinet annum usualem & unum diē ratione p̄dictarum sex horarum, & sic erit circulus anni naturalis ad modū & similitudinē colubri habētis caudā in ore, sicut videri poterit per lunarē computationem literarū & signorū, quibus dies anni signātur. Videamus igitur omne tēpus quatuor annorū, ut sciri possit qualiter quilibet annus naturalis incipiat per se, & qualiter terminetur. Incipit enim sub eodē signo, vel sub eadē litera, & sub eodē signo terminatur, quod dici poterit in ore colubri: ut si inceperit quis cōputare à litera B. facta cōputatione trecentorū et sexaginta quinq dierū,

day would begin in the morning and would be terminated conversely (as above). From that which precedes it is manifestly clear that the essoinee ought to appear at the Tower on the sixty-sixth day, and not sooner, lest he be in default, inasmuch as he has not observed duly his languor. Likewise not later than the sixty-sixth day according to the same persons, lest he be in default, inasmuch as he has not observed his day assigned to him at the Tower. He may therefore in security appear on the sixty-sixth day, to wit, the first day after the natural year, which contains under itself a minor usual year and one day as well in bissextile year as in the three other preceding years, because in this matter they do not differ in any respect. But the circle of the usual or solar year is made after the manner and after the likeness of a serpent without a tail, nor will the year be entire, nor can the body, which is an usual year and consists of three hundred and sixty-five days, be joined on to the head, unless a tail be joined on to it. But the six hours which are wanting may be called a tail, so that out of the usual year, which contains under itself three hundred and sixty-five days and six hours, to wit, the fourth part of a day, there results a natural year, which contains under itself an usual year and one day in respect of the aforesaid six hours, and so the circle of a natural year will be after the manner and after the likeness of a serpent having its tail in its mouth, as may be seen by a lunar computation of the letters and the signs by which the days of the years are marked. Let us see, therefore, all the time of the four years, that it may be known in what way each natural year begins by itself, and in what way it ends. For it begins under the same sign and with the same letter, and it ends under the same sign, which may be termed in the mouth of the serpent, as if one should have begun to compute from the letter B., after having made a computation of three hundred and sixty-five days,

f. 360.

et adjuncta una quarta, quia sumi debet de die contento sub signo B., efficientur annus & dies quæ dicuntur annus naturalis. Itē facta computatione anni secundi ppter tres quartas quæ adhuc remanēt de tempore futuro, iterū assumatur quædā quarta sub signo B., et erit secundus annus naturalis. Item cū adhuc remaneant duæ quartæ, incipiat annus tertius naturalis sub eodē signo B., & fiat computatio ut supra ad hoc q̄ fiat annus naturalis. Item cū adhuc remaneat una quarta, incipiat annus naturalis sub eodem signo, et facta cōputatione terminetur in eodē ratione ejusdem quartæ. Et sic erunt eodē quarto anno bis sex horæ & exinde duo dies quales sub eodē signo B., unus scilicet incipiēs, & alius annū terminans, & ppter illas bis sex horas dici posset annus bissextilis, & sic totū tēpus quatuor annorū continet sub se mille et quadingētos et unum diem, qui colligitur ex quatuor quartis quatuor añorum præcedentiū, & terminat totū tempus quatuor annorum, et dicitur excrecens, et nihil sibi vendicat ex tēpore quatuor annorū usualiū subsequentiū. Ne igitur subsequatur inconveniens de quo supradictum est, remanente die excrecente de tempore præterito sub eadem litera B. sive F., de necessitate retrahitur primus dies quatuor annorū subsequentium, ut exinde fiat computatio totius temporis quatuor annorum subsequentium in forma supradicta, & sic de tempore in tēpus in infinitum. Observare debet igitur essoniatus diligenter annū et diē, ne maturius vel tardius compareat quàm deberet. Si autem die nō legitimo comparuerit, & petens eodem die, tenens erit

and after adding a fourth part of a day, because it ought to be taken from the day contained under the sign B., there will be effected a year and a day, which are called a natural year. Likewise upon a computation having been made of a second year, on account of the three quarters which still remain of future time, let a certain fourth be again assumed under the sign B., and there will be a second natural year. Likewise since there still remain two quarters, let a third natural year begin under the same sign B., and let a computation be made as above for the purpose of making a natural year. Likewise since there still remains a quarter of a day, let the natural year commence under the same sign, and upon a computation having been made let it end in the same sign by reason of the said fourth part. And so there will be in the said fourth year twice six hours and thereupon two days as under the sign B., to wit, one beginning and the other ending a year, and on account of those twice six (bis sex) hours the year may be called bissextile, and so the entire time of four years contains under itself one thousand and four hundred days and one day, which is collected from the four quarters of a day in the four preceding years and terminates the whole time of four years, and is termed ex-crescent, and claims for itself nothing out of the time of the four usual years following. Lest, therefore, the inconvenience, which has been mentioned above, should follow upon the excrescent day remaining from the time past under the same letter B. or F., of necessity the first day of the four following years is drawn back, so that thereupon a computation should proceed of the whole time of the four years following in the form above-mentioned, and so from time to time without end. An essoinee ought therefore to observe diligently the year and a day, that he may not appear sooner or later than he ought to do. But if he has appeared on a day not the legitimate one and the claimant on the same day,

f. 360 b. in defalta, facta protestatione et recordo cōstabularii. Si autē petens die legitimo comparuerit, et tenens maturius ut prædictū est, idem erit ut supra. Quia licet tenens defaltam fecerit, petens tamen diem suum observabit. Si autem petens die legitimo comparuerit & tenens in crastino, tenens erit in defalta, quia diem suum non observavit.

3.
De appari-
tione es-
soniati

Si autem die legitimo nec petens nec tenens comparuerit, tunc uterquē facit defaltam, quia diem legitimum non observaverunt, & unde si ambo in crastino comparuerint fiat hinc inde compensatio defaltarum, quia paria delicta mutua compensatione tolluntur. Si autem unus in crastino & alius in die tertio vel quarto, licet ex toto non sint pares in delicto, tamen hinc inde erunt in defalta, & fiat cōpensatio ut supra. Item si unus illorum die legitimo comparuerit apud Turrim, et alius coram iudiciariis in curia, ille qui in curia comparat¹ defaltam facit, quia nullum diem in curia habuit, sed apud Turrim. Et ideo licet magis sit apparere in curia quàm apud Turrim, non defenditur, cū oporteat eum reverti ad iudicium per eandem viam per quam divertit à iudicio. Item esto q ambo compareant in curia die legitimo quo apud Turrim comparuisse debuerunt, fiat hinc inde compensatio defaltarum, secundum q supra paulum antedictum est. Cum autem ambo die legitimo apud Turrim comparuerint, aut comparet petens per seipsum, vel per attornatum, vel per essoniatores, & tenens aut cōparet per seipsum, vel per responsalem, cū per seipsum venire non possit.

¹ "comparet," MS. Rowl. C. 160.

the tenant will be in default, upon a protest having been made and a record by the constable. But if the claimant has appeared on the legitimate day and the tenant sooner as aforesaid, it will be the same as above. Because although the tenant has made a default, the claimant nevertheless shall observe his own day. But if the claimant has appeared on the legitimate day and the tenant on the morrow, the tenant will be in default, because he has not observed his own day. f. 360 b.

But if on the legitimate day neither the claimant nor the tenant has appeared, then each makes default, because they have not observed the legitimate day, and hence, if both should appear on the morrow, let there be made compensation on either side, because equal offences are taken away by mutual compensation. But if one should appear on the morrow and the other on the third or on the fourth day, although on the whole they are not equal in offence, nevertheless they will be on the one side and on the other side in default, and let compensation be made as above. Likewise if one of them has appeared on the legitimate day at the Tower, and the other before the justiciaries in court, he who has appeared in court makes default, because he has no day assigned to him in court, but at the Tower. And therefore, although it is more to appear in the court than at the Tower, it is not allowed, since he ought to return to judgment by the same way by which he turned aside from judgment. Likewise let it be that both should appear in court on the legitimate day on which they ought to have appeared at the Tower, let there be on the one and the other side a compensation of defaults according to what has been said a little above. But when both shall have appeared at the Tower on the legitimate day, either the claimant appears by himself or by an attorney, or by an essoiner, and the tenant appears either by himself or by an agent to answer on his behalf, when he cannot come in person. 3. Of the appearance of the essoiner.

4.
De officio
constabularii.

Qualiter vero venerit vel quo die, officium cōstabularii est omnia per ordinem irrotulare, recordum enim habet de iis quæ viderit, judicare tamen non poterit, quia apud Turrim non est iudicium cū ibi deficiat tertia pars iudicii, scilicet iudex & jurisdictio, habet enim constabularius recordum in hiis quæ sunt facti, & non in hiis quæ sunt iudicii sive juris. Irrotulare enim debet sic, quòd talis qui se essoniavit de malo lecti versus talem in tali comitatu de placito terræ, venit tali die apud Turrim London, & optulit se versus talem petentē, & petens nō venit sed in crastino. Et dixit quòd ad legitimum diem venit et tenens non, & petiit iudicium de defalta. Et è contrario si tenens dicat q ad legitimū diem venit & petens non, et tenens petit iudicium de defalta, mittantur partes ad iudicium in banco ut ibi iudicetur de defalta. Eodē modo si petens se essoniaverit apud Turrim, & attornatus¹ suus, mittantur tenens & essoniator corā justiciariis ut ibi iudicetur essonium. Sed videamus cui cōpetat essoniū apud Turrim. Et sciendū q nullum competit essonium tenenti qui se essoniavit de malo lecti, quia ex quo in iudicio omnia habuit essonia sua tam de malo veniendi quā de malo lecti, nullum habebit essonium antequā iterum comparuerit in iudicio. Iudicium vero est coram justiciariis in banco & non apud Turrim: nullum essonium sequitur. Item videndum an petenti competat essonium vel ejus attornato apud Turrim, vel ad bancum, quo casu videndum erit cū visus testatus fuerit coram justiciariis de banco, utrum diem habuerit per se, vel per essoniatorem suum, quia

¹ "vel attornatus suus," MS. Rawl. C. 160.

But in whatever manner he may have come and on whatever day, it is the office of the constable to enroll every thing in order, for he has a record of the things which he has seen, but he cannot judge, for at the Tower there is no judgment, since there is wanting there the third part of a judgment, namely, the judge and the jurisdiction, for the constable has a record in matters of fact, but not in matters of judgment or of law. For he ought to enroll in this manner, that so-and-so, who has essoined himself for bed-sickness against so-and-so in such a county court concerning a suit of land, came on such a day to the Tower of London and presented himself to join issue with so-and-so the plaintiff, and the plaintiff has not come, but on the morrow. And he has alleged that he came on the legitimate day and the defendant not so, and he has claimed judgment for a default. And on the contrary if the defendant says that he came on the legitimate day and the plaintiff not so, and the defendant claims judgment for a default, let the parties be sent to judgment in the Bench, that it may there be adjudicated upon the default. In the same manner if the plaintiff or his attorney has essoined himself at the Tower, let the defendant and his essoiner be sent before the justiciaries that the essoin be judged there. But let us see who is entitled to an essoin at the Tower. And it is to be known, that the defendant who has essoined himself for bed-sickness is not entitled to any essoin, because since he has had in judgment all his essoins as well for sickness on the way as for bed-sickness, he shall have no essoin before he has again appeared in judgment. But judgment is before the justiciaries in the Bench, and not at the Tower. No essoin follows. Likewise we must see whether the plaintiff or his attorney is entitled to an essoin at the Tower, or at the Bench, in which case it is to be seen when a view has been testified before the justiciaries of the Bench, whether he has had a day through himself or

4.
Of the
office of
the con-
stable.

f. 361. saepius se essoniare poterit coram justiciariis in banco, si saepius cōparuerit, post quālibet apparitionē, si fortè milites visores plures fecerint defaltas antequam comparuerint ad testificādum. Et si p essoniatore diē receperit in banco, nullū habebit essoniū apud Turrim, nō magis quā tenens antequā cōparuerit interim in curia, quia omnia essonia sua in iudicio habuit coram justiciariis sicut ipse tenens. Itē nec essonium habebit iterum corā justiciariis in iudicio, quia apparitionem apud Turrim nullum sequitur essonium, nec magis datur ei essoniū qm tenēti, quia si ei daretur, eadem ratione dari posset tenenti, q esse nō debet. Si autē p seipsum vel attornatū¹ diē receperit in bāco apud Turrim, unicū habebit essoniū, si voluerit, anteqm in iudicio corā justiciariis cōparuerit. Et sine essonio bene potest cōparere apud Turri, & in iudicio si voluerit. Si autē apud Turrim se essoniaverit, ibi nō iudicabitur essoniū, sed mittetur ad curiā² corā justiciariis iudicandum. Et nihilominus si voluerit nō obstante essonio comparere poterit impunē corā justiciariis in iudicio, & per essoniū factū apud Turrim salvabitur tempus medium, quousq̃ in iudicio cōparuerit. Si autem apud Turrim cōparuerit, & diem receperit in banco per constabularium, bene poterit se essoniare coram justiciariis in iudicio. Non tamen ex die sibi dato apud Turrim sed ex die prius recepto coram justiciariis in bāco. Cū autē uterq̃, tam petens qm tenēs, psonaliter cōparuerint apud Turrim die legitimo, dabitur utriq̃ parti dies coram justiciariis in banco si tunc ibi fuerint residentes, vel si nō, tunc

¹ "per attornatum," MS. Rawl. | ² "mittetur ad iudicium," MS. C. 160. | id.

through his essoiner, because he may repeatedly essoin himself before the justiciaries of the Bench, if he has repeatedly appeared, after each appearance, if by chance the knights, who are the viewers, have made several defaults before they have appeared to testify. And if he has received through an essoiner a day in the Bench, he shall have no essoin at the Tower, no more than the defendant, before he has appeared in court, because he has had all his essoins in judgment before the justiciaries just as the defendant. Likewise he shall not have again an essoin before the justiciaries in judgment, because no essoin follows his appearance at the Tower, nor is an essoin allowed to him any more than to the defendant, because if it were allowed to him, for the same reason it might be allowed to the defendant, which ought not to be. But if he has received in person or by his attorney a day in the Bench at the Tower, he shall have a single essoin, if he wishes, before he shall appear for judgment before the justiciaries. And he may well appear without an essoin at the Tower, and in judgment, if he wishes. But if he has essoined himself at the Tower, his essoin shall not be judged there, but it shall be sent to the court before the justiciaries to be judged. And nevertheless if he wishes, notwithstanding the essoin, he may appear with impunity before the justiciaries in judgment, and through the essoin made at the Tower the intermediate time will be saved, until he has appeared for judgment. But if he has appeared at the Tower and has received a day in the Bench through the constable, he may well essoin himself before the justiciaries at the judgment. Not however upon the day given to him at the Tower, but upon the day previously received by him before the justiciaries in the Bench. But when both the plaintiff as well as the defendant have personally appeared at the Tower on the legitimate day, there will be given to them both a day before the justiciaries in the Bench, if they shall then be there resident,

f. 361.

cùm redierint, si in brevi reversuri fuerint, vel post tempus. Non autem dabitur dies coram justiciariis itinerantibus, sive itinerātes sint in eodē com̃, ubi terra fuerit quæ petitur, sive in alio, sed primo corā justiciariis de banco, si qui tunc fuerint residētes in banco, & alii itinerantes in comitatu, ubi terra fuerit quæ petitur. Et justicarii de banco exinde dabunt diem corā justiciariis itinerantibus, ut sic per ordinē pcedat judicium. Et ideo à Turri mittuntur partes in bācum ut loquela in eodem judicio finem accipiat, in quo sumpsit initium.

CAP. XIV.

1. Redeamus iterū ad visum quatuor visorū, & videamus quid sequatur, si visores legitimi nō sunt ad videndū, & per hoc visus illegitimus, de quibus supradictū est. Quo casu, si essoniatus per visum talium visorū surrexerit, ut si ei surrectionem dederint, erit in defalta, secundum q̃ superius dictum est. Melius est igitur q̃ se teneat in lecto, vel quòd licentiam petat surgendi, antequā visus testatus fuerit per tales, quam si obtinuerit, & sic comparuerit, excusatur à defalta, non propter visum, cū sit illegitimus, sed propter licentiam si forte petens visum calumniaverit & visores. Si autem non, tunc procedat loquela in utroque casu, ac si visus legitimè factus esset. Si autem essoniatus forte licentiam surgendi petere voluerit, tunc ad diem sibi datum per visores tales tutius

Cum visus fieri debeat vel factus fuerit, si visores non sunt legitimi, quid facere debet essoniatus.

but if not, then when they have returned, if they are about to return shortly, or after some time. But a day shall not be assigned to them before the justiciaries itinerant, whether they be itinerant in the same county, in which the land which is claimed is situated, or in another county, but in the first place before the justiciaries in the Bench, if any be then resident in the Bench, and the others are itinerant in the county, where the land is, which is claimed. And the justiciaries in the Bench shall thereupon assign a day before the justiciaries itinerant, that the judgment may thus proceed in due order. And therefore the parties are sent from the Tower to the Bench, that the cause may receive its termination in the same court in which it had its commencement.

CHAPTER XIV.

Let us return to the view of the four viewers, and let us see what follows, if the viewers are not the legitimate persons to make the view, and thereby the view is illegitimate, concerning which we have spoken above. In which case, if the essoinee has got up from his bed through the view of such viewers, as if they have given him leave to get up, he will be in default, according to what has been said above. It is better therefore that he should keep himself in bed, or that he should request a licence to get up, before his view has been testified by the said viewers, which if he has obtained and has thus appeared, he is excused from default, not on account of the view, which has been illegitimate, but on account of the licence, if by chance the plaintiff has impeached the view and the viewers. But if not, then let the cause proceed in either case, as if the view had been legitimately made. But if by chance the essoinee has wished to apply for a licence to get up, then upon the day assigned to him by such viewers it will be safer for

1.
When the view ought to be made or has been made, if the viewers are not legitimate, what the essoinee ought to do.

f. 361 b. erit quòd mittat pro se responsalem. Et quo casu, si petens velit visum calumniare, iterum fiat visus legitime, si primus sufficiens non fuerit. Si autem non, tunc pcedat loquela inter petentem & responsalem. Si autem prædicti tales, qui ad visum faciendum sunt inutiles, languorem adjudicaverint essoniato, cùm visū testificati fuerint in p̄sentia petentis, & petens contra visores nihil exceperit, sed diem receperit apud Turrim sine calumnia, licet visus ab initio fuerit illegitimus, efficitur legitimus per consensum petentis, & ita quòd ulteriùs nihil obicere potest cōtra visores, nec cōtra visum. Et idem erit si absens fuerit in testificatione visus, cùm p̄sens esse debet, & hoc suæ debet imputare negligentia, & in quibus casibus necesse erit q tenens essoniatus se teneat ad languorem, & ulterius licentiā surgēdi nō habebit. Si autem visus (quāvis legitimus) nondū testatus fuerit forte infra annū & diē, licet languor adjudicatus, semper infra annū & post annū quandoq̄ poterit tenens habere licentiā surgēdi, donec visus testatus fuerit. Et quamvis post annū & diē petens apud Turrim obtulerit se cōtra tenentē essoniatum, hoc tenenti non nocebit, quia nullus dies datus est ei in iudicio apud Turrim. Et si forte cōstabularius mādaverit q petens certo die venerit, & tenens essoniatus nō, si ad querelā petētis sumoneatur tenens q sit apud Turrim ad respondendū corā iusticiariis, quare diem sibi datū apud Turrim non serva-

him to send a person to answer on his behalf. And in which case, if the plaintiff wishes to impeach the view, let a view be made a second time legitimately, if the first has not been sufficient. But if not, then let the cause proceed between the plaintiff and the respondent on behalf of the defendant. But if the aforesaid persons, who have been useless to make a view, have adjudged languor to the essoinee, when they have testified their view in the presence of the plaintiff, and the plaintiff has made no exception against the viewers, but has received a day at the Tower without any impeachment of the viewers, although the view may have been illegitimate from the commencement, it is rendered legitimate through the consent of the plaintiff, and so that he can make no further objection against the viewers or against the view. And the same will happen, if he has been absent at the testification of the view, when he ought to be present, and this he ought to impute to his own negligence, and in which cases it will be necessary that the defendant essoinee should keep himself in languor, and he shall not have a licence any further to get up. But if the view (although legitimate) has not yet been testified by chance within a year and a day, although languor has been adjudged, the defendant may always within the year and after the year at any time have a licence to get up until the view has been testified. And although after a year and a day the plaintiff has presented himself at the Tower to join issue with the defendant essoinee, this shall not prejudice the defendant, because no day has been appointed to him at the Tower for judgment. And if by chance the constable has issued an order that the plaintiff should come on a certain day, and the defendant essoinee not so, if upon the complaint of the plaintiff the defendant be summoned that he should present himself at the Tower to answer before the justiciaries, wherefore he has not kept the day assigned to him at the Tower, if the

f. 361 b.

vit, si petens se tenuerit ad defaltā, respondere poterit tenens, q visus non fuit legitimè factus, & perinde nō visus, & sic q nec potuit nec debuit ibi cōparere, & sic oportebit q hoc p visores (cū cōparuerint) terminetur. Item dicere poterit, q nō necesse habuit ibi cōparere, quia tenens diem apud Turrin non habuit, cui deberet vel posset respondere, & sicut videtur, se defendere poterit à defalta.

2. Si languor
vertatur in
morbum
incura-
bilem, quod
essoniat
non poterit
venire, tunc
mittat re-
sponsalem.

Cū autē p tales (ut prædictū est) fuerit languor adjudicatus, & visus testatus sine calumnia, & dies datus petenti apud Turrin, tunc necesse erit essoniato q se teneat ad languorē, & observet annū & diē apud Turrin, & q in ppria psona sua veniat (si possit) modo quo supradictū est, vel q pro se sufficientē mittat responsalem, qui p eo litem suscipiat & defendat. Et tunc aut mittit responsalē aut non mittit. Si autem nec venerit nec responsalem miserit, erit in defalta. Si autē responsalem miserit apud Turrin, qui sit ibi diem recepturus & in iudicio cū cōparuerit corā iusticiariis responsurus, audietur ejus responsio quicunq sit ille, dū tamē sit major. Et si forte nullū miserit, dū tū sit aliquis apud Turrin qui dicat se esse missum & diem recipiat ac si in iudicio ut responsalis respondeat, si de ejus responsione iudicium faciēdū sit sicut de duello vadiando & de magna assisa suūmonenda, vel de aliquo q sit de substātia negotii & p q loquela debeat terminari, iudicium illud debet poni in respectu

plaintiff has kept himself to the default, the defendant may answer, that the view has not been legitimately made, and is equivalent to no view at all, and so that he neither could nor ought to have appeared, and thus it will be necessary that this should be determined by the viewers (when they have appeared). Likewise he may say that he did not deem it necessary to appear there, because the defendant had not a day appointed to him at the Tower, to which he could or ought to have answered, and he will be able, as it seems, to defend himself from a default.

But when through such viewers a languor has been adjudged, as aforesaid, and the view has been testified without any impeachment, and a day has been given to the plaintiff at the Tower, then it will be necessary for the essoinee to keep himself to the languor, and let him observe the year and a day at the Tower, and that he come in his own person (if he can) in the manner as above said, or send a sufficient representative on his behalf, who can undertake and defend the lawsuit. And then he either sends or does not send a representative. But if he shall neither come himself nor send a representative, he will be in default. But if he shall send a representative to the Tower, who shall be present there in order to accept a day and in order to make answer for him in judgment when he has appeared before the justiciaries, the answer of him, whoever he may be, provided he be of full age, shall be heard. And if by chance he has sent no one, provided there be at the Tower some person, who will say that he has been sent, and who will accept a day as if he were answering as a representative in the judgment, if a judgment has to be made concerning his answer as concerning a wager of battle and concerning the summoning of a great assise, or concerning anything which is of the substance of the affair and which ought to be terminated by a trial, that judgment ought to be respited, until through four knights

2.
If a languor
is turned
into an in-
curable
disease, so
that the
essoinee
cannot
come, then
let him
send a per-
son to
answer for
him.

quousq̃ per quatuor milites missos ad languidū sciatur, si talem miserit p se responsalem, & si ratam habuerit responsionem quam idem talis p eo fecerit: & quòd ita fieri debeat, pbatur in rotulo de termino S. M. anno regis H. xv. incipiente xvi. in comitatu Salop. Breve de mittendo iv. milites ad languidum ad audiendum &c. tale erit.

3.
Breve de
mittendo ad
f. 362.
languidum
ut sciatur,
si ratam
habuerit
responsio-
nem quam
responsalis
pro eo fecit.

Rex vic. salutem. Mitte iv. legales milites de comitatu tuo apud talē locū ad A. qui se in curia nostra corā justiciariis vel corā nobis essoniavit de malo lecti versus B. de placito terræ ad audiendum si idē A. p se misit C. corā pfatis justic. nostris corā nobis &c. ut respōsalem suū ad audiendū vel ad respondendū eidē B. de eadē terra, & si ratā habuerit respōsionē quā idem C. p eo fecit in eodē placito, & similiter ad audiendum si velit eundē C. in p̃dicto placito attornare in p̃dicto loco suo ad lucrādum vel pdendū, et venire facias corā pfatis justic. nostris vel corā nobis &c. ad talē terminū pfatos quatuor milites ad testificandū ea quæ à pfato A. super p̃missis audierint. Et habeas ibi nomina militū & hoc breve. Teste &c. Qui ad diem venerint, audiatur eorum testificatio, si autē nō venerint, pcedatur cōtra eos ad defaltā quousq̃ cōparuerint, sicut p̃cessū est supra, cōtra quatuor milites missos ad languidum. Ille vero qui sic essoniatus est ratam habeat responsionē si voluerit, & cōcedat q talē miserit respōsalē, & ita sub nomine ipsius respōsalis pcedere possit, & terminari loquela. Si autē ratam nō habuerit responsionē, adjudicabitur in defalta. Necesse est igitur ei q ratam habeat responsalis responsionē,

sent to the languid man it may be known, whether he has sent such person to answer for him, and if he ratifies the answer, which the said person has made in his behalf, and that this should be so done is proved in the roll of St. Michael's term in the fifteenth and sixteenth years of king Henry in the county of Salop. A writ for sending four knights to a languid person to hear &c. will be of this tenor.

The king to the viscount greeting. Send four loyal knights of your county to such a place to A., who has essoined himself in our court before our justiciaries or before us for bed-sickness against B. in a suit for land, in order to hear if the said A. has by himself sent C. to present himself before our said justiciaries or before us &c. as his representative to hear and to answer to the said B. concerning the said land, and if he has ratified the answer which the said C. has made on his behalf in the said suit, and in like manner to hear if he wishes to attourn the said C. in the aforesaid suit in his aforesaid place to gain or to lose, and cause to come before our aforesaid justiciaries or before us &c. at such a term the aforesaid four knights to testify those things which they shall have heard from the aforesaid A. concerning the premises. And have there the names of the knights and this writ. Witness &c. Who if they have come on the day, let their testification be heard, but if they have not come, let proceedings be taken against them for their default until they have appeared, just as proceedings have been taken above against the four knights sent to a languid person. But the person who has been thus essoined, let him ratify the answer made on his behalf (if he wishes), and let him admit that he sent such a representative, and thus the trial may proceed under the name of his representative and be terminated. But if he does not ratify the answer, he shall be adjudged in default. It is necessary, therefore, for him that he should ratify the answer of his representative

3.
A writ to
send to a
languid
person, that
it may be
known, if
he ratifies
the answer,
which his
representa-
tive has
made on
his behalf.

& cōcedat q talem miserat responsalē, & sic poterit nomine ipsius responsalis tota pcedere loquela & terminari, & post quamlibet apparitionē cū dominus litis ratā habuerit responsionē suā, poterit se essoniare nomine pprio de malo veniendi, sicut ac si esset in curia attornatus. Si autem ratam non habuerit responsionē, adjudicabitur in defalta. Oportet igitur de necessitate q illā ratā habeat, nihilominus tamen si in ppria psona venire voluerit & respondere, bene poterit si voluerit, & tempus mediū & apparitio apud terminū salvabitur per p̄sentem responsalē. Si autē milites forte non venerint ad diem suūmonitionis, nec essoniatus responsalis, semper sequatur versus milites, & irrotuletur sic defalta militū. Talis qui se facit responsalē talis optulit se quarto die versus A. B. C. D. milites missos &c. et si poterit terminari negotium &c. Et notandū in fine q si respōsalis apud Turrim cōparuerit maturiūs quā deberet, non nocebit languido, dum tamen responsalis cōparuit die legitimo. Si autem tardiūs, hoc nocebit essoniato. Si autē responsalis maturiūs se obtulerit quā deberet, & essoniatus die legitimo, sive responsalis venerit die legitimo, sive non, tenens salvabitur à defalta sive responsalem advocaverit sive non. Si autem respōsalis venerit die legitimo, & essoniatus in crastino die, vel tertio, vel quarto die p responsalem, salvabitur tenens à defalta, ut paulo ante dictum est. Et circa responsalem multa sunt dicenda, licet ista ad præsens tempus dicta sufficiant.

and admit that he has sent the said representative, and so the whole trial may proceed and be terminated in the name of his representative, and after each appearance, since the lord of the suit has ratified his answer, he will be able to essoin himself in his own name for sickness on the way, just as if he was attourned in court. But if he has not ratified the answer, he will be adjudged to be in default. It is incumbent therefore of necessity that he should ratify it, nevertheless, however, if he has chosen to come in his own person and to make answer, he may well do so, if he wishes, and the intermediate time and the appearance at the term will be saved by the representative then present. But if by chance the knights have not come on the day of summons nor the essoined representative, let proceedings always follow against the knights, and let the default of the knights be thus enrolled. So-and-so who makes himself the representative of a certain person presented himself on the fourth day against A. B. C. D. the knights sent &c., and so the affair may be terminated. And it is to be noted at the end, that if a representative has appeared at the Tower sooner than he ought to have done, it will not prejudice the languid person, provided always that the representative has appeared on a legitimate day. But if he has appeared later than he ought to have done, this will hurt the essoinee. But if the representative has presented himself sooner than he ought to have done, and the essoinee on his legitimate day, whether the representative has come on a legitimate day or not, the defendant will be saved from a default whether he has avowed the representative or not. But if the representative has come on a legitimate day, and the essoinee on the morrow of it, or on the third or on the fourth day through a representative, the defendant will be saved from a default, as has been explained above. And concerning a representative many things are to be said, although these sayings for the present time are sufficient.

CAP. XV.

1. Dictū est supra si unus tenēs p se se essoniaverit de malo lecti qualiter pcedendū sit in essonio, vel q si pluries se essoniaverit de malo lecti & semel languorem habuerit cessabit essonium de malo lecti, & q in toto placito nō habebit nisi unicum essoñ nec habebūt nisi unicum languorem. Nūc autē vidēdū, si plures sint ptiēpes tenētes unicū jus habentes, qualiter sit pcedendū in essonio de malo lecti post essoñū de malo veniēdi, et quotiēs se essoniare possent, et quādo cessabit essoñū de malo lecti. Quotiēs? et sciendū q sēpius, post quālibet apparitionē & diē legitimē in curia datū, simul si voluerit, vel vicissim post unicā apparitionē donec omnes habuerint sua essonia, s. quilibet unicū de malo veniēdi, & aliud de malo lecti, et tunc simul cōpareant ad respōdendū, cū autē aliū diē receperint post diē datū de cōsensu ptium, vel post visum petitū, vel warrātū vocatum, habere poterit omnia eadē essonia, & eodem modo, et sic ad quamlibet apparitionē donec terminetur loquela, & ita q nullus languor interveniat. Itē cū sic se essoniaverint de malo lecti omnes simul, omnibus poterit adjudicari lāguor vel omnibus surrectio vel quibusdam surrectio & quibusdam languor: si omnibus surrectio, tunc veniant omnes simul et respondeant, si autem non venerint omnes vel quidam, tunc fiat de omnibus sicut supradictum est de uno, secundū q cōparuerint vel non. Si autē omnibus simul adjudicatus fuerit

Si plures
sint par-
ticipes te-
nentes uni-
cum jus
habentes
qualiter
proceden-
dum in
essonio de
malo lecti.
f. 362 b.

CHAPTER XV.

It has been explained above, if one tenant by himself has essoined himself for bed-sickness, in what way proceedings are to be had in an essoin, or that, if he has repeatedly essoined himself for bed-sickness and has once had languor, the essoin for bed-sickness will cease, and that in the whole suit he will not have but a single essoin nor will he have more than a single languor. But now we must see, if there be several co-parcener tenants having a single right, in what manner proceedings must be had in an essoin for bed-sickness after an essoin for sickness by the way, and how often they may essoin themselves, and when an essoin for bed-sickness will cease. How often? and it is to be known that repeatedly after each appearance and day assigned legitimately in court, together if they choose, or in turns after a single appearance, until all have had their essoins, to wit, each has had one for sickness on the way, and another for bed-sickness, and then let them all appear together to make answer, but when they have received another day after the day given with the assent of parties, or after a view has been requested or a warrantor vouched, each may have all the same essoins and in the same manner, and so upon each appearance until the trial be terminated, and so that no languor intervenes. Likewise when they have thus essoined themselves for bed-sickness all together, languor may be adjudged to them all, or licence to get up from bed to them all, or to some licence to get up from bed and to some languor; if licence to get up be granted to all, then let them all come together and make answer, but if they do not all or some come together, then let it be done with them all as above said concerning one, according as they have appeared or not. But if languor has been adjudged to them all together, let it be done with all as above said concerning one, according as all or some have languor

1.
If there be several coparcener tenants having a single right, how proceedings are to be had in an essoin for bed-sickness.
f. 362 b.

languor, fiat de omnibus ut supradictum est de uno, secundū q omnes vel quidā languorē et diem suū servaverint vel nō servaverint. Si autē post unā apparitionē et diem datū vicissim cōparuerint omnes et vicissim se essoniaverint de malo lecti et vicissim p eosdē vel diversos milites fuerit eis lāguor adjudicatus, si plures ibi videantur esse languores, tam in primo casu qm in secundo, cū omnes tenētes sunt quasi unicū jus habētes, erunt omnes languores accipiendi pro uno languore ppter juris unitatem. Et cū sic omnes languorē habuerint simul vel vicissim, sicut prædictū est, vel saltē ex pluribus unus, extunc nō ante cessabit essonium de malo lecti in psonis omnium usque in finem litis, sicut supradictum est de uno tenente. Si autem quidam ex pluribus, vel unus se primō essoniaverit de malo veniendi, & quidam p̄sentes sint & quidam fecerint defaultam, essoniati diem habebunt per essonium suum. Illis autē qui p̄sentes fuerint dabitur idem dies, contra absentes vero pcedendum erit ad defaultam, secundum q̄ inferius dicitur de defaultis. Illi vero qui essoniati fuerint ad alium diem, si voluerint essoniare se, poterunt de malo lecti. Et illi qui primo die diē ceperunt in iudicio, ad diem suum se essoniare poterunt si voluerint, vel comparere. Si autem cōpareant, bene possunt alium diem recipere, & sic de die in diem donec eis constiterit de surrectione essoniatorum vel de languore, ut si languor fuerit adjudicatus & testatus, q tunc eundē diē recipiant cum petente, et apud Turrin ut videtur, ne si ad hancum et in iudicio diē receperint p hoc dividantur causæ continentia. Et cū sic diē receperint coram iusticiariis in banco apud Turrin cum essoniato, cōpetit eis unicum essonium de malo veniendi apud Tur-

and have observed their day or have not observed it. But if after one appearance and a day given to them they have all appeared in turns, and have in turns essoined themselves for bed-sickness, and languor has been adjudged to them in turns by the same or by different knights, if there are seen to be there several languors as well in the first case as in the second, since all the tenants have as it were a single right, all the languors will have to be taken as one languor on account of the unity of right; and since all have had languor together or in turns, as aforesaid, or at least one out of many, from that time forward an essoin for bed-sickness will not cease in the persons of them all until the end of the lawsuit, as said above concerning a single tenant. But if some out of many or one has in the first place essoined himself for sickness by the way, and some are present and some have made default, the essoinees shall have a day through their essoiner. But to those who are present the same day shall be assigned, but against the absent proceedings shall be taken for a default, according to what will be said below concerning defaults. But those who have been essoined to another day, if they wish to essoin themselves they will be able to do so for bed-sickness. And those who on the first day took a day in the court, upon their day may essoin themselves, if they wish, or may appear. But if they appear, they may well receive another day, and so from day to day until they have ascertained concerning the convalescence of the essoinees or concerning their languor, so that, if languor be adjudged and testified, they may then receive the same day with the plaintiff, and at the Tower as it seems, lest if they shall receive a day at the bench and in the court, the continuity of the cause should be broken off. And when they have thus received a day before the justiciaries in the bench at the Tower with the essoinee, they are entitled to a single essoin for sickness on the way at the Tower, or before the justiciaries in

rim, vel coram iudiciariis in iudicio, q si ibi nō venerint nec se essoniaverint poterūt esse in defalta, sicut ipse petēs. Si autē adjudicetur q infirmitas fit in malum transiens, et q certus dies detur essoniato q compareat in iudicio ad diem illum, possunt alii qui prius essoniati non fuerint incipere tunc primò essonia sua unus vel omnes simul vel vicissim, ut supradictum est in principio. Et poterit unus vel quidam amittere
 f. 363. essonium suū per tacitā renuntiationē. Esto q A. cōparuerit, & B. se essoniaverit de malo veniendi, & ad alium diem comparuerit, & A. se essoniaverit, cū B. ab initio electionē habuerit veniendi vel essoniandi se de malo lecti, eligendo viam veniendi, tacitē renuntiavit essoniū de malo lecti. Et unde cū ita cōparuerit & diem receperit, ad alium diem non habebit essonium de malo lecti ratione essonii precedentis de malo veniendi, propter interruptionē, eo q comparuit & ppter tacitam renuntiationem. Et quia essonium de malo lecti iūmediatē non sequitur essonium de malo veniendi. Et de essonio de servitio domini regis interposito possit disputari. Itē nec essonium habebit ille sic comparens de malo veniendi antequam omnes in iudicio comparuerint, quia habet omnia essonia sua vel q tantundē valet, ratione supradicta. Defaltam autem possunt facere omnes vel quidam illorum secundum q de uno supradictum est. Et poterit unus ptem suam amittere per defaltam ppter suam negligentiam, & alius salvare se à defalta per suam diligentiam, quia res quæ petitur, licet cōmunis sit, patitur sectionem et divisionem. De viro autē & uxore implacitatis nō est ita, quia res uxoria divisionem non patitur inter virum

court, but if they have not come there nor have essoined themselves, they may be in default, just as the plaintiff himself. But if it be adjudged that the infirmity has become a transient malady, and that a certain day is given to the essoinee that he should appear in court on that day, others who have not been essoined hitherto may commence then for the first time their essoins, one, or all together, or in turns, as has been above said at the beginning. And one or some of them may lose their essoin by a tacit renunciation of it. Let it be that A. has appeared and that B. has essoined himself for sickness on the way, and has appeared on another day, and A. has essoined himself, when B. from the beginning has had his election of coming or of essoining himself for bed-sickness, by choosing a way of coming, he has tacitly renounced his essoin for bed-sickness. And hence when he has so appeared and has received a day, he shall not have an essoin for bed-sickness for another day by reason of his previous essoin for sickness by the way on account of the interruption inasmuch as he has appeared and on account of his tacit renunciation, and because an essoin for bed-sickness does not immediately follow an essoin of sickness by the way. And concerning an essoin for the king's service being interposed it may be disputed. Likewise a person so appearing shall not have an essoin for sickness by the way before all have appeared in judgment, because he has all his essoins, or what is equivalent, for the reason above said. For all or some of them may make a default, according to what has been said above concerning one person. And one person may lose his part through his own negligence by default, and another may save himself from default by his own diligence, because the estate which is claimed, although it be common, admits of section and division. But in the case of a man and his wife being sued it is not so, because the estate of the wife does not allow of division between man and wife.

f. 363.

& uxorem. Tota est enim utriusque in solidū, et non in cōmuni, cūm sit una caro vir et uxor, quāvis animæ diversæ. Et ideo, si unus ipsorum defaltā fecerit, utrique erit damnosa. Et cūm defalta facta fuerit, capiat terra in manum domini regis p parvum cape. Et ille, qui defaltam fecerit, sumoneatur q sit ad alium diem auditurus iudicium suum, nulla facta mentione de eo sive sit vir sive sit uxor qui defaltā non fecit. Si autē unus de pluribus moriatur antequam omnes comparuerint, cadit tota loquela. Si autem unus infra ætatem, sic remanebit loquela in suspenso usque ad ætatē. Si autē furiosus & dilucidis non gaudeat intervallis, sic remanebit loquela usq̃ ad mortē: quia ex quo semel animo & corpore incepit possidere, superveniente furore nunquā desinere poterit animo possidere. Si autem dilucidis gaudeat intervallis, expectabitur tempus quo se melius habuerit. De fatuo vero & stulto aliud erit, secundum q̃ inferius plenius dicitur in tractatu de exceptionibus.

CAP. XVI.

1. Si quis
essoniatus
fuerit in
comitatu
de malo
lecti, qua-
liter debeat
essoniatus
apparere,
et quando.

Si quis vero in cōm essoniatus fuerit de malo lecti, illud idem observari videtur in comitatu quod in curia domini regis. Et cūm languor ei fuerit adjudicatus infra annum & diem venire debet ad aliquem certum locum ad hoc deputatum per comitatum, s. castrum aliquod, & ibi ostendere castellano quo die venerit, sicut constabulario Turre ostenderet si placitum esset apud West. in curia domini regis. Sed petens (ut videt̃) non habet necesse aliquem diem observare in

For the entirety of it belongs to both in the lump, and not in common, since man and wife are one flesh, although different souls. And accordingly if one of them makes default, it will be prejudicial to both. And when a default has been made, let the land be taken into the hand of the lord the king by the little *cape*. And he who has made default let him be summoned to present himself on another day in order to hear his judgment, no mention being made thereof whether it be the man or his wife who has not made default. But if one out of several dies before they have all appeared, the whole cause is at an end. But if one of them be under age, the cause shall remain in suspense until he has come of age. But if he be a madman and does not enjoy lucid intervals, the cause shall be stayed until his death, because since he has once begun to possess with the mind and with the body, madness having overtaken him he can never cease to possess mentally. But if he enjoys lucid intervals, the time shall be waited for when he will be better. But concerning a fatuous and foolish person it will be otherwise, according to what will be said more fully below in the Treatise on Exceptions.

CHAPTER XVI.

But if any person have been essoined in a county court for bed sickness, it seems that the same thing should be observed in the county court as in the court of the lord the king. And when languor has been adjudged to him, he ought within a year and a day to come to some certain place assigned for that purpose by the county court, to wit, some castle, and there show to the castellan on what day he has come, just as he would show to the constable of the Tower, if the suit should be in the court of the lord the king at Westminster. But the plaintiff (as it seems) is not under the necessity of

1. If a person has been essoined in the county court for bed-sickness, in what way the essoiner ought to appear, and when.

coñ, cū languor fuerit adjudicatus & testatus, sed observet diem suum apud castrum, sicut faceret apud Turrim, si placitum esset in curia dñi regis. Et videndum est inter cætera utrum essoniaret se de malo lecti
 f. 363 b. in eodē coñ, ubi terra est quæ petitur vel in alio. Si autē in eodē coñ, tunc habet vic. potestatē mittendi quatuor milites ad videndū, etiam sine brevi, qui videant & testificent, & ita pcedant in omnibus, secundū q̄ superius dictum est de curia dñi regis de defaultis, & licentia surgendi, & omnibus aliis. Si autē extra coñ fuerit essoniatus, tunc non habet vic. potestatē mittendi milites de coñ suo in alium coñ, nec multo fortius milites de alio comitatu ad videndū, quia ad hoc non extenditur sua jurisdictio. Habet igitur petens necesse q̄ sibi perquirat per brē quòd essoniatus videatur per tale breve vic. directum ubi essoniatus jacuerit.

2.
 Breve de
 videndo
 eum, qui
 essoniatur
 in comitatu
 de malo
 lecti.

Rex vic. salutē. Mitte quatuor legales milites apud talem locum, ad videndum utrum talis infirmitas, qua A. essoniavit se de malo lecti versus B. de placito terræ in comitatu tuo vel in alio coñ tali, sit languor vel non. Et si sit languor, tunc ponant ei diem à die visus sui in unum annum & unū diem, q̄ tunc sit ad pximū coñ. Et si convaluerit antequā visus factus & testatus fuerit, bene poterit coñ dare licentiā surgendi essoniato, secundū q̄ in curia dñi regis observatur. Quam quidē si coñ essoniato denegaverit, ad querelā ipsius poterit dominus rex in defectu coñ licentiā surgendi dare. Et eodē modo, si loquela fuerit in curia

observing any day in the county court, when languor has been adjudged to him and testified, but let him observe his own day at the castle, as he would do at the Tower, if the suit were in the court of the lord the king. And it is to be seen amongst other things whether he has essoined himself for bed-sickness in the court of the same county where the land is which is claimed, or in another county. But if it be in the same county, then the viscount has power to send four knights to view, even without a writ, to view and testify, and so let them proceed in all respects according to what has been said above concerning the court of the lord the king, concerning defaults and a license to get up, and all other matters. But if he has been essoined outside the county, then the viscount has not the power of sending knights from his own county into another county, much less knights of another county to make a view, because his jurisdiction does not extend to this. The plaintiff therefore is under the necessity of applying for a writ that the essoinee may be viewed through a writ of this kind directed to the viscount of the county, where the essoinee may be lying. f. 363 b.

The king to the viscount greeting. Send four loyal knights to such a place to see whether a certain infirmity, for which A. has essoined himself as for bed-sickness against B. in a suit for land in your county, or in another county, be a languor or not. And if it be a languor, then let them appoint a day from the day of the view for a year and a day, that he may then present himself in your county court. And if he shall have recovered before the view has been made and has been testified, the county court may well grant to the essoinee a license to get up, according to what is observed in the court of the lord the king, which if the county court has denied to the essoinee, upon his complaint the lord the king may in the defect of the county court grant him a license to get up. And in the same way, if the cause has

2.
A writ for viewing him, who is essoined in a county court for bed-sickness.

baroñ vel alterius qui curiam habet, poterit dñs rex licentiam dare surgendi in defectu curiæ per tale bñe. Forma brevis supra, ubi petitur licentia surgendi, & sic incipit: Ostensum est nobis. In fine notandū, q si essoniatus ad diem sibi datū p visores non venerit, excusari poterit à defalta ppter casus fortuitos, & legitima impedimenta intervenientia, si pbentur, secundū q supra tactū est in parte, & inferius dicitur plenius de defaltis.

CAP. XVII.

1.
De essonio
de malo
villæ.
Britton, vi.
ch. viii.
§ 4.

Est etiam inter alia essonia essoniū anomalū, eo q nō sequitur regulam aliorū essoniorū, q dicitur essoniū de malo villæ, ubi quis primo die in curia cōparuerit & se obtulerit, & sine responso eodē die recesserit, si ppter infirmitatē aliquā supervenientē, à loco ubi hospitatus fuerit & receptus se transferre non possit, nec ad curiā venire, mittere debet ad curiam duos essoniatōres qui re vera essoniatōres dici non possunt, quia diē non recipiunt, sed nuntii & excusatores, qui in curia publicè ptestantur, q talis tali infirmitate detentus est in eadē villa, vel in alia tali ubi pnoctavit, quòd ad curiā venire non possit pro lucrari nec pro pdere, & sic recedant, & eodē modo mittat secundo die duos, sed alios à duobus primis, & eodē modo tertio die sed diversos à primis, & sic excusatur usq ad quartū, & quarto die mittantur ad infirmū ex parte justic. quatuor milites, si in curia vell in villa inveniuntur, ad audiendū qm talis loco suo attornare voluerit

been in the court of a baron or of another person who holds a court, the lord the king may grant a license to get up on the failure of the court by a writ of this kind. The form of the writ as above when a license to get up is asked for, and it begins thus: It has been shown to us. In the end it is to be noted, that if the essoinee on the day appointed to him by the viewers has not come, his default may be excused on account of fortuitous accidents and legitimate impediments intervening, if they are proved, according to what has been above touched upon in part, and what will be explained more fully below in treating of defaults.

CHAPTER XVII.

There is amongst essoins an anomalous essoin, inas-
 much as it does not follow the rule of other essoins, which
 is called an essoin for vill-sickness, where a person has
 appeared on the first day in the court and has presented
 himself, and has withdrawn on the first day without an
 answer, if on account of some supervening infirmity he
 cannot transport himself from the place where he has
 been lodged and entertained, nor come to the court, he
 ought to send to the court two essoiners, who cannot be
 termed properly essoiners, because they do not receive a
 day, but messengers and excusers, who bear witness
 publicly in the court, that so-and-so is detained in the
 said vill by a certain infirmity, or in a certain other vill
 where he has passed the night, so that he could not
 come to the court to gain nor to lose, and so they may
 retire, and in the same way let him send on the second
 day two persons, but different persons from the two first,
 and in the same way on the third day two persons,
 but different from the preceding persons, and in this
 manner he is excused up to the fourth day; and on the
 fourth day let there be sent on the part of the justi-
 ciaries four knights, if they can be found in the court or
 in the vill, to hear what person so-and-so wishes to

1.
 Of an es-
 soin for
 vill-sick-
 ness.

ad lucrandū vel pdendū in loquela quæ est inter ipsum & talē petentē. Si autē ipsum ibi invenerint, capietur attornatus si ipse psonalitè venire non possit. Si autē in villa tali nō inveniat & hoc testē per quatuor milites, erit tenens in defalta, ac si essoniatus esset de malo lecti. Sed nec ōni cōpetit essoniū istud nec ōni loco.

2.
f. 364.
Ubi non
jacet es-
sonium de
malo villæ.

In cōm autem non jacet essoniū de malo villæ, propter brevitatem temporis de die comit, & ubi non expectatur quartus dies, ut de termino Sancti Hilarii anno regni regis Henrici sexto in comitatu Buck., de Alicia de Jarmille & Petro de Imnere. Itē nec coram justiciariis assignatis ad aliquam assisam vel juratam capiendam, vel aliquid tale faciendū ad certum diē, ubi non expectatur quartus dies. Itē nec in persona alicujus attornati sive in comitatu sive in curia dñi regis factus fuerit attornatus, quia licet milites mittantur ad eum, ipse attornatū facere nō possit non magis quā pcurator pcuratorem: ut de terñ Paschæ anno regni regis H. nono in comitatu Buck., de attornato Henry de S. Warerico, qui se essoniavit apud West de malo villæ p tres dies, et in quarto die (habito consilio & tractatu inter justiciarios) non fuit ei essonium de malo villæ allocatum, quia non potuit facere attornatum, etsi quarto die venire posset personaliter, tamen salvare non posset tres dies pteritos, et unde dominus suus fuit in defalta, & capienda esset terra in manū dñi regis per parvum cape, eo quòd in curia optulit se pro domino suo, & à justic. qui recordum habent visus fuit in curia. Itē esto quòd post essonium de malo lecti & languorē testatum per quatuor

attourn in his place to gain or to lose in the cause which is between him and so-and-so the plaintiff. But if they shall find him there, an attorney shall be taken, if he cannot come himself personally. But if so-and-so cannot be found and this is testified by the four knights, the defendant will be in default, as if he had been essoined for bed-sickness. But not every person is entitled to such an essoin, nor at all times.

But an essoin of vill sickness does not lie in the county court on account of the shortness of the time from the day of the county court, and where the fourth day is not waited for, as in St. Hilary term in the sixth year of the reign of king Henry in the county of Buckingham, concerning Alice de Jarpmille and Peter de Innere. Likewise not before the justiciaries assigned to hold any assise or jury, or to do anything similar by a certain day, where the fourth day is not waited for. Likewise not in the person of an attorney, whether he has been appointed attorney in the county court or in the court of the lord the king, beause although knights are sent to him, he himself cannot appoint an attorney any more than an agent can appoint an agent, as in Easter term in the ninth year of the reign of king Henry in the county of Buckingham, concerning an attorney Henry de S. Warericus, who essoined himself at Westminster for vill-sickness for three days, and on the fourth day (upon a consultation and a discussion amongst the justiciaries) an essoin for vill-sickness was not allowed to him, because he could not appoint an attorney, although he might have come personally upon the fourth day, nevertheless he could not save the past three days, and hence his principal was in default, and the land was to be taken into the hand of the king by a little *cape*, inasmuch as he had presented himself in the court on behalf of his principal, and had been seen in the court by the justiciaries, who have a record. Likewise let it be that after an essoin for bed-sickness and a languor

2.
f. 364.
When an
essoin of
vill-sick-
ness does
not lie.

Tempore
regis
Johannis.

milites, fecerit quis defaultam antequam in curia comparuerit, eodem modo capienda erit terra in manum domini regis per parvum cape, ac si prius in curia cōparuisset, quia diem sibi datum per quatuor milites dedicere non potest non magis quā̃m si ei daretur in curia, quia in hoc habere debent recordum, nec mandabitur dies captionis sicut per magnum cape, quia nunquam dicitur, quia non servavit diē sibi datū per quatuor milites. Et q habent recordum, & q contra ipsorum recordum defendi non poterit, nec p legem, nec per unum audientē & unum intelligentē, quin stetur eorum recordo: habetis de itinere M. de Pateshull in comitatu Leycest̃r de tempore regis Johannis, sed hoc fuit, quia essoniatus coram quatuor militibus cognovit se esse essoniatum, quod quidem defendere non potuit per legem contra eorum recordum, cū ipsum in lecto invenerint essonium non dedicentem. Si autem sic eum non invenerint, aliud erit. Eodem modo si quis extra iudicium coram justiciariis attornatum fecerit, licet in curia, si comparuerit¹ & defaultam fecerit, capienda est² terra in manum domini regis p parvum cape, ac si in curia comparuisset, quia sũmonitionem defendere non potuit contra recordum justic. & eo q fecit attornatum, p consequens cognovit se esse sũmonitum, & secundum quod dicitur infra plenius de defaultis.

¹ "licet in curia non comparuerit," MS. Rowl. C. 160.

² "capienda erit," MS. id.

testified by four knights, a person has made default before he has appeared in the court, in the same manner his land will have to be taken into the hand of the lord the king by a little *cape*, just as if he had not previously appeared in the court, because he cannot deny the day assigned to him by the four knights any more than if it were assigned to him in the court, because in this they ought to have a record, nor shall a day of caption be commanded as by a great *cape*, because it shall never be said, because he has not observed the day assigned to him by the four knights. And that they have a record, and that their record cannot be disputed, neither through the law nor through one person hearing and one person understanding, so that the matter should not abide by their record, you have a case in the iter of Martin de Pateshull in the county of Leicester in the time of king John, but this was because the essoinee had acknowledged before the four knights that he had been essoined, which he could not dispute through the law against their record, since they found him in bed not denying the essoin. But if they have not so found him, it will be otherwise. In the same manner if any person has extrajudicially appointed an attorney before the justiciaries, although in the court he has not appeared and has made default, the land will have to be taken into the hand of the lord the king by the little *cape*, just as if he had appeared in the court, because he cannot dispute the summons against the record of the justiciaries, and inasmuch as he has appointed an attorney, he has consequently acknowledged that he had been summoned, and according to what will be said below more fully concerning defaults.

TRACTATUS TERTIUS
LIBER QUINTI,
IN QUO TRACTATUR DE DEFALTIS.¹

CAP. I.

1.
De con-
tumacibus
et non
venientibus
ad judi-
cium post
legitimam
summon-
itionem.
f. 364 b.

Redeamus igitur ad diem sūmonitionis in actione reali. Dictum est supra qualiter quis excusatur pessonnia, si ad iudicium non venerit cūm fuerit sūmonitus legitimè: Nunc autem dicendum est de contumacibus & nō venientibus ad iudicium, qualiter pcedendum sit contra eos in actione reali secundū q fuerit simplex, mixta, vel duplex. Et ideo videndum quis dici debeat contumax & quæ pœna sequaī, cum, quando res aliqua petitur imōbilis per actionem in rem (contumax dici poterit sive reus latitet sive non) ad iudicium sūmonitus sui copiam nō fecerit nec defensus fuerit. Latitare autem est si quis se turpiter occultaverit, & copiam sui non facere est, quando reus id agit ne adversarius potestatem sui habeat, licet præsens fuerit in curia. Et sive reus contumax fuerit sive non, sufficit ad hoc quòd pcedatur contra ipsum, q simpliciter absens sit ex quacunq̄ causa. Et unde si primo die non venerit, nec secundo, nec tertio, nec quarto, tunc offerente se liti petente, quocunq̄ die venerit ante

¹ The text is continued in MS. | simply with the title "De Contu-
Rawl. C. 160 without any notice of | " macibus &c." prefixed to it as in
its being a distinct treatise, but | the side note.

THE THIRD TREATISE

OF THE

FIFTH BOOK,

WHICH TREATS OF DEFAULTS.

CHAPTER I.

Let us return to the day of summons in a real action. It has been explained above in what manner a person is excused through essoins, if he has not appeared for judgment, when he has been legitimately summoned. We must now speak of persons who are contumacious and do not appear for judgment, in what manner proceedings are to be had against them in a real action, according as it may be simple, mixed, or double. And accordingly it is to be seen who ought to be called contumacious, and what penalty attends him if on an occasion when some immovable thing is claimed by an *actio in rem* (he may be called contumacious whether he lies hidden or not), having been summoned to judgment, he has not made himself available, nor has been defended. But a person is said to lie hidden, if he has basely concealed himself, and he is said not to make himself available, when as a defendant he does that which prevents his adversary having any power over him, although he be present in the court. And whether the defendant shall be contumacious or not, it is sufficient for proceedings to be taken against him, that he is simply absent from whatever cause. And hence if he has not come on the first day, nor on the second, nor on the third, nor on the fourth, then upon the plaintiff offering himself to join issue, on whatever day he may

1. Of persons contumacious and not coming to judgment after a legitimate summons. f. 364 b.

Q 6366. A A

quartum diem, capiatur terra sive res petita in manū dñi regis propter defaltam non venientis, quam quidem captionem modica sequitur pœna, vel etiam nulla. Et unde¹ si reus venerit infra xv. dies post captionem & illam p plevinam petierit, si ad diem sibi datum in curia defendere se possit de defalta, si petens inde iudiciū petierit, reformabitur ei possessio, ut de principali respondeat. Sed quid si primo die non venerit tenens, & petens primo die se obtulerit & visus fuerit à justic. in curia qui habent recordum, si petens in crastino se obtulerit, si defaltam sanare non possit, amittere poterit seysinam. Et eodē modo si tertio die vel quarto.

2.
Compen-
satio de-
faltarum.

f. 365.

Sed quid si neuter ipsorum cōparuerit primo die, sed uterque in crastino, tunc fiat compensatio defaltarum, cū pares sint in culpa: ut supra dicitur. Et sic fiat de aliis diebus usque ad quartum diem. Si autem impares fuerint, ut p̄dictum est, q aliquo die compareat petens, & tenens non, vel è contrario, tunc fiat eodem modo ut supra. Si autē primo die comparuerit petens, & tenens non, et in crastino tenens, et petens non, si tertio die comparuerint ambo, fiat inter eos ut supra dictum est compensatio, & sic semper usq̄ ad quartum diē, & in quarto die, & ulterius non, nisi petens voluerit. Poterit tamen tenens, & eodē modo petens, excusare se usq̄ ad quartū diē, multis modis. Tenens s. antequam in curia cōparuerit, si sumonitionem defenderit & sursisam, & essoniū tam de malo veniendi qm de malo lecti, si forte fuerit² interjecta, secundū q supradictū est in

¹ "unde," omitted MS. Rawl. C. 160.

² "fuerint," MS. Rawl. C. 160.

have come before the fourth day, let his land or the thing claimed be taken into the hand of the lord the king on account of the default of his not coming, which caption a moderate penalty or none at all follows. And hence if the defendant shall have come within fifteen days after the caption and has claimed it by a plevin, if on the day given to him in the court he can defend himself concerning the default, if the plaintiff shall claim judgment thereupon, the possession shall be restored to him, that he may answer on the principal point. But what if the tenant has not come on the first day, and the claimant has presented himself and has been viewed by the justices in the court who have a record, if the claimant has presented himself on the morrow, if he cannot cure his default, he may lose the seysine. And in the same manner on the third day or on the fourth day.

But what if neither of them shall have appeared on the first day, but both of them on the morrow, then let there be a compensation of defaults, since they are alike in fault, as has been said above. And so let it be with other things up to the fourth day. But if they shall have been unlike, as has been said above, that on a certain day the claimant should appear and the tenant not, or contrariwise, then let it be done in the same manner as above. But if on the first day the claimant shall have appeared, and the tenant not, and on the morrow the tenant shall have appeared and the claimant not, if on the third day both shall have appeared, let there be as above said a compensation between them, and so up to the fourth day and on the fourth day, but no further, unless the claimant is willing. But the tenant may, and in the same manner the claimant may excuse himself up to the fourth day in many ways. The tenant for instance, before he has appeared in the court, if he has denied the summons and the adjournment, and if essoins as well of sickness in coming as of bed-sickness have by chance been interposed, according to what has been said above in the treatise con-

^{2.}
A com-
pensation
of defaults.

f. 365.

tractatu de sumonitionibus. Itē excusare se poterit usq̃ in quartū diē, & in quarto die, p rationabilia impedimēta intervenientia, si fuerint pbata: & etiā post quartum diē, si infra quartum diē p nuntium legitimē fuerit excusatus, qui impedimentū ostenderit corā justiciariis in iudicio, quæ talia esse possunt.

3.
De excusa-
tionibus
non veni-
entis.
Britton, vi.
ch. vi. § 1.

Si quis per vim majorē detentus fuerit, cui resistere nō possit, ut si captus fuerit & in priona detentus, non tamen ob sui culpā. Itē si inciderit in latrones qui eū ligaverint, & spoliaverint, & detinuerint forte, q nuntiū mittere nō possit infra quartū diē, quo casu post quartū diē excusabitur, dum tamē impedimentū pbetur. Itē excusari poterit p inundationē aquarū & tēpestatem. Item si pons solutus fuerit, vel navigium subtractū per fraudē petentis, dum tamē ei objici nō potest q ire possit p circuitum, vel q alii eadē die qua transire debuit cōmode & sine difficultate & absq̃ periculo transierunt. Secus autem erit si cum periculo, quia nō debet quis se in periculis & infortuniis exponere. Eodē modo poterit impedimentū intervenire de nivibus, & glacie, & aliis multis modis. Si vero infra quartū diē non venerit nec se excusaverit, ut p̃dictum est, sive ita fuerit impeditus sive nō, capiatur terra vel res petita in manū dñi regis, ppter defaltā, per visum legalium hominum, & fiat talis irrotulatio petente se liti offerente: A. optulit se quarto die versus B. de placito q reddat ei tantum terræ cum ptinentiis in tali villa vel advocacionē talis ecclesiæ, vel cōmu-

cerning summonses. Likewise he may excuse himself up to the fourth day, and on the fourth day on account of reasonable impediments intervening, if they shall have been proved, and even after the fourth day, if within the fourth day he has been legitimately excused through a messenger, who shall have shown an impediment before the justiciaries in court, which may be of this kind.

If any one shall have been detained by *vis major*, which he could not resist, as if he has been taken captive and has been detained in a prison, not however from any fault of his own. Likewise if he has fallen into the hands of robbers, who have bound him and stripped him and by chance detained him, so that he could not send a messenger within the fourth day, in which case he will be excused after the fourth day, provided however the impediment be proved. Likewise he may be excused through an inundation of waters and bad weather. Likewise if a bridge has been loosened, or a ferry boat withdrawn through the fraud of the claimant, provided however it cannot be objected to him that he might have come by a circuitous road, or that on the same day on which he ought to have passed others have passed conveniently and without difficulty and without peril. But it will be otherwise, if with peril, because a person ought not to expose himself to perils and misfortunes. In the same way an impediment may intervene from snow or ice and in many other ways. But if he shall not have come nor excused himself within the fourth day, as said above, whether he has been so impeded or not, let the land or the thing claimed be taken into the hand of the lord the king, on account of default, by the view of loyal men, and let there be an enrolment of this kind upon the claimant presenting himself to join issue: A. has presented himself on the fourth day against B. in a suit that he should restore to him so much land with its appurtenances in such a vill, or the advowson of such a church, or common of pasture for so many beasts,

3.
Of the excusations
of a person
not appearing.

niam pasturæ ad tot averia quæ clamat ut jus suū versus eum : vel, ut dotē suā, et sic de aliis rebus omnibus q̄ petuntur ex tali actione, & B non venit, & suṃoneas &c. Judiciū &c. Terra vel talis res capiatur in manū dñi regis, & dies &c., et suṃoneatur q̄ sit ad talem diē inde responsurus & ostensurus, quare nō fuit corā justic. nostris ad talem diē &c. per tale bře. Forma brevis talis est, q̄ dicitur magnum cape.

4.
Si legitime
summoni-
tus defal-
tam fecerit,
breve,
quod vo-
catur mag-
num cape.

Rex vic. salutē. Cape in manū nram p visū legaliū hominū de comitatu tuo tantā terrā cū ptinentiis in tali villa, vel pasturā ad tot oves, vel talē advocatiōē, qm A. de N. in cuī nra corā justic. nris apud West. clamat ut jus suum versus talem p defectu ipsius talis, vel si dos petita fuerit, tunc dicatur ita : scilicet quam A. (q̄ fuit uxor B.) in curia nostra &c. clamat in dotē versus C. p defectu ipsius C. vel tertiā partē tantæ terræ cum ptinentiis &c., et ita de singulis rebus quæ petuntur per actionem in rem, secundum formam brevis originalis, & tunc ibi sic: Et diem captionis scire facias justic. nostris apud West. per literas tuas sigillatas. Et suṃoneas per bonos suṃmonitores prædictū C. q̄ sit coram eisdem justic. nostris apud West. inde respōsurus, & ostensurus quare nō fuit corā eisdē justic. nostris apud West. ad talē diem, sicut suṃmonitus fuit, vel quare non observavit diē sibi datum p essonē suū ad talem terminū (si forte fuerit essoniatus & diē habuerit p essoniatōrē suū). Et habeas ibi suṃmonitores, & hoc breve, & nomina eorū p quorū visum hoc feceris. Teste &c. Et notandum q̄ captio ista in manū dñi regis p magnū cape locū habet ubi quis

f 365 b.

which he claims as his right against him : or as his dower, and so concerning all other things which are claimed from such an action, and B. has not come, and summon &c. Judgment &c. Let the land or such thing be taken into the hand of the lord the king, and a day &c., and let him be summoned that he be present on such a day to answer thereon, and to show cause wherefore he was not present before our justiciaries on such a day &c. through a writ of this kind. The form of the writ is of this nature, which is called a *great cape*.

The king to the viscount greeting. Take into my hand by the view of loyal men of thy county so much land with its appurtenances in such a vill, or pasture for so many sheep, or such an advowson, which A. de N. in our court before our justiciaries at Westminster claims as his own right against such an one on account of his default : or if dower be claimed, then let it be stated thus to wit, which A. (who was the wife of B.) in our court &c. claims for dower against C. on account of the default of the said C., or a third part of so much land with its appurtenances &c., and so concerning the particuliar things which are claimed by an action *in rem*, according to the form of the original writ, and then there thus : and cause the day of the caption to be made known to our justiciaries at Westminster by thy sealed letters. And do thou summon by good summoners the aforesaid C. that he be present before our said justiciaries at Westminster on such a day according as he has been summoned, or wherefore he has not observed the day given to him through his essoin in such a term (if by chance he shall have been essoined and had a day appointed through his essoiner). And cause the summoners to be there present and this writ and the names of those through whom thou hast made this view. Witness, &c. And it is to be noted, that the caption into the hand of the lord the king through a *great cape* has place, where a person has made

4.
If legiti-
mately
summoned
he has
made de-
fault, a
writ which
is called a
great cape.

f. 365 b.

defaltā fecerit anteqm in curia cōparuerit, vel attornatū fecerit, q tantundē valet.

5.
Natura et
effectus
brevis
magnum
cape juxta
virtutem
vocabulo-
rum con-
tentorum
in brevi.

Et quia scire nō poterit quid sequatur ex tali cap-
tione in manū dñi regis, nisi sciatur de virtute brevis
et vocabulorū in brevi contentorū, imprimis videndū
est, quid sequatur ex tali vocabulo sive dictione, cape
in manū nostrā &c.; et quid inde sequatur perpendi
poterit manifeste ex pmissis paulò ante. Ad hoc autē,
q dicitur, per visum legalium hominū, ut ppendi possit
& testificari (si opus fuerit) si capta fuerit in manum
dñi regis, et per eorū visum. Et si capta fuerit per
eorū visum, tunc quo die, quia in hoc habent recor-
dum cui cōtradici nō poterit, quantū ad hoc, secundum
q defalta facta fuerit ante apparitionē vel post, et
secundum quod suūmonitionem testati fuerint vel non.
Itē continetur, pro defectu talis, sine aliqua pbatone,
quia sufficit sola absentia, licet non pbetur ex qua
causa, & licet excusationē habuerit, tamen de excusa-
tione cōstare nō poterit justic. anteqm tenens ap-
paruerit excusationē suam ptendēdo, præmittendo¹ et
pbando, ut supra de excusationibus. Item dies cap-
tionis indorsari debet in tergo brevis, ut per hoc &
attestationē militū sciri possit quo die terra capta
fuerit, & per consequens si ad horam petita fuerit p
plevinam, quia peti debet per plevinam infra quinde-
nam postqm capta fuerit in manum dñi regis: q si
antequam capiatur in manum dñi regis petatur per
plevinam, vel post quindenam, nō petitur ad horam:

¹ “ p'mittendo,” omitted MS. Raw C. 160.

default before he has appeared in the court, or has constituted an attorney, which is equivalent.

And because it cannot be known what follows upon such a caption into the hands of the lord the king, unless it be known concerning the virtue of the writ and of the terms contained in the writ, we must see in the first place, what follows from such a term or phrase, "take into our hand," &c. ; and what ensues thereon may be clearly inferred from what has been premised shortly previously.

5.
The nature
and effect
of the writ
magnum
cape, ac-
cording to
the virtue
of the
words con-
tained in
the writ.

But in regard to this, which is said, "through the view of loyal men," that it may be understood and testified (if it be necessary) if it has been taken into the hand of the king, and through their view. And if it has been taken through their view, then "on what day," because they have in this a record, which cannot be contradicted as far as this is concerned, according as default has been made before appearing in court or after, and according as they have testified to the summons or not. Likewise it is contained, "for the failure of so-and-so," without any proof, because his absence alone is sufficient, although it be not proved from what cause, and although he may have an excuse, nevertheless it cannot be established before the justiciaries concerning his excuse, before the tenant has appeared holding forth his excuse, premising and proving it, as above concerning excusations. Likewise the day of the caption ought to be indorsed on the back of the writ, that thereby and by the attestation of the knights it may be known on what day the land was taken, and consequently if it has been claimed by a plevin at the proper hour, because it ought to be claimed by a plevin within the fifteenth day after it has been taken into the hand of the lord the king, because if it be claimed by a plevin before it has been taken into the hand of the lord the king, or after the fifteenth day, it is not claimed at the proper

et ideo peti poterit maturiùs, vel tardiùs quàm deberet. Debet petitio sic irrotulari. Talis petiit per talem (si per alium petierit, quàm per seipsum) tali die terram suam p plevinam, q̃ capta fuit in manū dñi regis per defaltam quam fecit versus talem, coram justic. nostris talibus tali die: et bñe non habebit, nec aliud fiet, nisi q̃ dicetur ei, quòd observet diem suum in brevi de captione contentū.

6. Videtur igitur per hoc q̃ p talē plevinam & diem
 Qualiter
 terra capta
 in manum
 domini
 regis per
 defaltam
 peti debeat
 per ple-
 vinam.
 receptum p se, cū in ppria psona petierit & diem
 receperit secundū suṃmonitionē p breve de captione,
 sive suṃmonitus fuerit, sive non, q̃ ulterius dedicere non
 poterit suṃmonitionem, si postea in iudicio defaltā fecerit,
 s. post captionem. Si autē per alium quàm per semet-
 ipsū, videtur q̃ fieri debet contrarium, q̃ defendi possit
 per legem, si primam & ultimam defenderit suṃmoni-
 tionem. Captio vero simplex esse debet. Non enim
 debet per hoc tenens impediri, quin omnium rerum &
 tenemētorū illorū liberā habeat administrationē, sive
 jus habuerit in eisdē sive nō, quia si sic non esset,
 potius diceretur disseysina quàm districtio. Et unde,
 si tempore quo res sic fuerit in manu dñi regis con-
 tingat ecclesiam aliquam vacare q̃ sit de ptinentiis, ad
 tenentem spectabit collatio, et non ad regē. Cū autē
 sic petatur per plevinam, non erit statim replegianda
 tenenti, antequam in iudicio comparuerit, & tunc
 sciatur utrum petens se tenere voluerit ad principale
 placitū vel ad defaltā. Cū autem ad principale pla-
 citum se tenuerit, sic renunciat defaltæ, et erit defalta

f. 366.

hour, and therefore it may be claimed sooner or later than it ought to be. The claim ought to be enrolled in this manner: "So-and-so claimed through such a person" (if he has claimed through another than himself) on "such a day through a plevin his land, which had been taken into the hand of the lord the king, through the default which he made towards so-and-so before our justiciaries on such a day": and he shall not have a writ, nor shall anything else be done, except that it shall be said to him, that he should observe his day contained in the writ of caption.

It seems therefore through this, that through such a plevin and a day received by himself, when he has claimed in person and received a day according to a summons through a writ of caption, whether he has been summoned or not, that he cannot any further deny the summons, if he has afterwards made default in court, to wit, after the caption. But if [he has claimed] through another than himself, it appears that the contrary ought to be done, that it may be contested by law, if he has disputed the first and last summons. But the caption ought to be simple. For the tenant ought not to be thereby impeded from having the free administration of all the estates and the tenements, whether he has the right in them or not, because if it were not so, it would be rather termed a disseysine than a distress. And hence, if during the time in which the estate has thus been in the hand of the lord the king it has happened that a church which is amongst its appurtenances becomes vacant, the collation to it will belong to the tenant, not to the king. But when it is thus claimed through a plevin, it will not have to be forthwith replevined to the tenant, before he has appeared in court, and then let it be known whether he wishes to hold himself to the principal plea or to the default. But when he holds himself to the principal plea, he thereby renounces the default, and the default will be null and

6.
How land
taken into
the hand
of the lord
the king
through
default
ought to be
claimed
through a
plevin.

f. 366.

nulla, et res replegianda. Si autem se tenuerit ad defaltam, adhuc non erit replegianda, donec sanaverit defaltam, q si sanare non possit, extunc erit seysina petenti adjudicanda.

7.
Quid fieri
debet in
placito ad-
vocationis
post de-
faltam.

Dicitur in pcedenti, quòd res petita capi debet in manum dñi regis. Esto igitur, q in placito advoca- tionis fieri debeat captio in manum dñi regis, sed cùm jus advocationis incorporale sit & invisibile, nec tangi- bile, qualiter ergo capi poterit in manum dñi regis q videri non poterit nec tangi? Erit igitur officium vicecomitis in hac parte, quòd, assūptis secum p̄bis & legalibus hominibus vicinis, accedat ad ecclesiā cujus advocatio petitur, & ibi publicè p̄testetur corā p̄bis hominibus q seysiat in manū dñi regis ecclesiā illā, et p consequens jus advocationis quod est in corpore ecclesiae, licet illud jus sit incorporale. Et cùm ceperit corpus in manum dñi regis quod est visibile & tangi- bile, per consequens capīt id quod est incorporale, licet invisibile & non tangibile. Jus enim sine sub- jecto vel corpore cui insit esse non poterit. Et vul- gariter dicitur, talis habet vel petit jus advocationis talis ecclesiae, & non talis manerii: et ideo non est necesse q maneriū capiať, licet ecclesia sita infra aliquod manerium sit de ptinentiis ejusdem manerii. Continetur etiam in brevi de catione, quod tenens sumoneatur quòd sit respōsurus de principali placito, et ostensurus &c. Ad quod sciendū, quòd ad talē sumonitionē nunqm sequatur essoniū, quia prius oportebit tenentē respondere de defalta. Itē nec dies rationa-

the estate will have to be replevined. But if he has held himself to the default, it will not have to be replevined, until he has cured his default; but if he cannot cure it, thereupon the seysine will have to be adjudged to the claimant.

It is said in the preceding paragraph that the estate claimed ought to be taken into the hand of the lord the king. Let it be therefore that in a plea of advowson a caption into the hand of the lord the king ought to be made; but since the right of advowson is incorporeal and invisible, and not tangible, how therefore can that which cannot be seen nor be touched be taken into the hand of the lord the king? It will therefore be the office of the viscount in this part, that having associated with himself honest and loyal men who are neighbours, he should proceed to the church, of which the advowson is claimed, and should there publicly protest in the presence of the honest men that he seizes into the hand of the lord the king that church, and consequently the right of advowson, which is in the body of the church, although that right be incorporeal. And when he has taken into the hand of the lord the king that body which is visible and tangible, he consequently takes that which is incorporeal although invisible and not tangible. For the right cannot be without the subject or body in which it is inherent. And it is commonly said, so-and-so has or claims the right of advowson of such a church, and not of such a manor, and therefore it is not necessary that he should take the manor, although the church being situated within a manor is of the appurtenances of the said manor. It is contained also in the writ of caption, that the tenant be summoned in order to answer in the principal plea and to show, &c. as to which it is to be known, that upon such a summons an essoin never follows, because it will be incumbent that the tenant should first answer concerning the default. Likewise not a reasonable day on account of contumacy,

7.
What
ought to
be done
in a plea
of advow-
son after
a default.

bilis ppter contumaciā s. xv. dierum, non magis quān ad disseysinā propter roberiā. Suūmonitores tamen venire debent coram justic. si opus fuerit ad testificandam suūmonitionem.

8.
Qualiter
defenditur
suūmoni-
tio et sur-
sisa per
legem.

Ad diem vero suūmonitionis p breve de captione, aut venit tenens aut non venit, si autē venerit, tunc in primis queratur à petente utrū se tenere voluerit ad principale placitū, vel capitale, vel ad defaltā. Si autē ad capitale placitū, tūc quasi renūtiāns defaltæ, statim et eodē die ad capitale placitū petenti respōdebit. Si autē se tenuerit ad defaltā, tūc habet tenēs necesse defēdere suūmonitionē & sursisam, et similiter aliquādo tam essonia de malo veniēdi qm essonia de malo lecti, si fuerint interjecta, ubi oportet q diligēs fiat examinatio ad cautelā. Si autē simpliciter defendat suūmonitionē & sursisā, & appareāt suūmonitores qui suūmonitionē testētur, ubi priūs fuerit sufficienter testificata, & qui more testiū diligēter & separatī examinati, & in ōibus cōvenientes, sufficiēter pbaverint suūmonitionē, tūc demū necesse erit tenēti ppter p̄sumptionē testificationis suūmonitorū, suūmonitionē defēdere p legē, cū nulla sit suūmonitio nisi cū sit testificata et pbata. Nec erit (ut p̄dictū est) fra replegianda anteqm tenēs legē fecerit, vel in lege faciēda defecerit. Dabitur igitur ptib⁹ ali⁹ dies de lege faciēda, cū tenēs plegios invenerit de lege faciēda. Nec etiā poterit tenēs attornatū facere ad legē faciēdā, cū ipse tenēs legē vadia-verit, qd si fecerit, nisi illā fecerit in ppria psona, defaltā facit. Ad diē vero sibi datū ad legē faciēdā, poterit tenēs se essoniare si voluerit, & petēs eodē modo, eodē die, & vicissī, si voluerit, quia nō licet i

to wit, of fifteen days, not more than upon a disseysine on account of a robbery. But the summoners ought to come before the justiciaries, if it should be necessary, to testify to the summons.

But on the day of the summons by a writ of caption, the tenant either comes or he does not come, but, if he has come, then let it be first questioned by the plaintiff whether he wishes to hold himself to the principal or capital plea or to the default. But if to the capital plea, then as it were renouncing the default, he shall answer to the claimant forthwith and on the same day upon the capital plea. But if he shall hold himself to the default, then the tenant must of necessity contest the summons and the neglect, and in like manner sometimes as well essoins of sickness by the way as essoins of bed-sickness, if they have been interposed, where it is incumbent that there should be a diligent examination for caution's sake. But if he simply contests the summons and the neglect, and the summoners should appear to testify to the summons, where it has previously been sufficiently testified, and who having been diligently and separately examined in the manner of witnesses, and agreeing in all matters, have sufficiently proved the summons, then it will be necessary for the tenant on account of the presumption arising on the testification of the summoners, to contest the summons at law, since there is no summons unless it has been testified and proved: nor will the land (as above said) have to be replevined before the tenant has made his law, or has failed in making his law. Another day will therefore be given to the parties for making their law, when the tenant has found sureties that he will make his law. Nor will the tenant be able to constitute an attorney to make his law, since the tenant himself has wagered his law, which if he has done, he makes default if he does not make his law in person. But on the day given to him to make his law the tenant may essoin himself, if he will, and the claimant in the same manner on the same day, and in turns, for that is not

8.
How the
summons
and the
neglect are
to be con-
tested at
law.

f. 366 b. hac pte tenēti q'd petēti nō licet nec ecōversò. Ad diē vero legis, aut tenēs facit legē suā, aut deficit in lege faciēda. Si autē legē fecerit, tanquā excusatus à defalta eodē die ad placitum principale respondebit. Sufficit enim ad dilationē & p rationabili suṁmonitione tenentis, tempus intermedium inter legem vadiatam & legē factā. Si autē in lege defecerit tenens, tunc amittet seysina, & petens seysinam recuperabit, & tenens in misericordia. Et habeat ille tale recuperare, quale habere debebit, & plegii de lege, secundū quosdam, quieti erunt de misericordia, quia sufficit q eum habuerunt ad legē faciendā in curia, licet in lege facienda deficeret, ad similitudinē plegiorū de psequendo. Sed secundū alios (& melius) omnes in misericordia, quia nō sunt plegii inventi solūmodo ad veniendū ad curiā, nisi plegiatus id fecerit, ad q faciendū plegios invenerit. Queri possit inter alia, cū tenens p legem factā se defenderit à defalta, quare petens jacturā causæ suæ non incurrat, s. bñe vel actionē, sicut ipse tenens seysinam suam si de lege, deficeret. Respondeo. Sufficit ei p cōmodo ppriæ seysinæ reformatio. Esto etiam q tenens primo die suṁmonitionis post defaltā et captionē terræ in manū dñi regis nō venerit, sed secūdo, tertio, vel quarto die, & petens primo die venerit, & se optulerit, & petat iudicium de utraque defalta, tunc habet tenens necesse utramq defendere, nisi forte ita sic¹ q personaliter post captionē terram petierit per plevinam, quo caso de facili defēdere nō possit secundam suṁmonitionem et diem à justic. datū in ipsa replicatione, et ab eo recollectum &

¹ "sit," MS. Rowl. C. 160.

allowed in this part to the tenant which is not allowed to the claimant, nor conversely. But on the day of the law, either the tenant makes his law or he fails in making his law. But if he has made his law, having been as it were excused from his default on the same day he shall make his answer to the principal plea. For it suffices for a delay and for a reasonable summonition of the tenant, the intermediate time between the wagering of the law and the making of the law. But if the tenant has failed in his law, then he shall lose his seysine, and the claimant shall recover the seysine, and the tenant shall be subject to amercement. And let him have such a recovery, as he ought to have, and the sureties for his law according to some shall be acquitted from amercement, because it suffices that they presented him to make his law in the court, although he might fail to make his law, after the likeness of sureties to prosecute. But according to others (and it is the better opinion) they are all subject to amercement, for they are not sureties found only to cause him to appear in the court, unless the person pledged by them has done that, for which he has found them as sureties. It may be asked amongst other questions, when the tenant has defended himself from a default by making his law, why the claimant does not incur the loss of his cause, to wit, the writ or the action, as the tenant himself would lose his seysine, if he had failed in his law. I answer. It suffices to him for his advantage the reformation of his proper seysine. Let it be also that the tenant on the first day of the summons after the default and the caption of the land into the hand of the lord the king has not come, but on the second, third, or fourth day, and the claimant has come on the first day, and has presented himself, and claims judgment on both defaults, then the tenant is under the necessity of contesting both, unless by chance it be so that he has personally after the caption claimed the land by a plevin, in which case he cannot well contest the second summons and the day given to him by the justiciaries in his very replication, and recollected and ree

f. 366 b.

Q 626.

B B

receptum. Si autē nihil ipsorū¹ intervenerit, vel per aliū petita fuerit quam p ipsum, tunc utramq̃ poterit defendere sumōnitionem, si utraq̃ fuerit testificata & pbata. Si autē neutra, tunc liberatur à defaulta. Si autem una tantum, tunc oportet q̃, illam defendet eodē modo quo supra. Si autē utraq̃, & in pbatōne utriusq̃ defecerit, erit in defaulta. Et eodem modo si in pbatōne unius, & adjudicabitur seysina petenti. Si autem utramque legem fecerit, reformabitur ei seysina, ut incontinenti respondeat. Si autē primā summonitionem defenderit & cognoverit secundam, erit in defaulta nisi impedimentum illegitimum allegaverit & pbaverit. Et quo casu, quāvis impedimentū pbatum fuerit ut legitimum, si terra capta in manum dñi regis legitimè non fuerit ad horam petita per plevinam.

9.
Si defaulta
facta fue-
rit, qualiter
sit proce-
dendum.

Redeamus ad iudicium post secundam defaultam, & captionem terræ, sive alterius rei, in manum dñi regis, ubi tenens omninò non cōparuerit, nec ad primum diem, nec secundum, nec tertium, nec quartū, p seipsum nec per nuntium, ut p̃dictum est, quo casu non poterit excusari defaulta, & ideo sequitur iudicium sub hiis verbis.

10.
Irrotulatio
post de-
faltam.

A. qui præsens est s. petiit versus B. tantam terram cum pertinentiis in tali villa ut jus suum, & B. non venit & sumōnitus fuit aliàs & summonitio fuit testata vel non dedicta, & ita quòd terra capta fuit in manum domini regis per defaultam, quam idem B. fecit tali die & ipse iterum summonitus q̃ esset ad hunc diem, & non venit, & mandatum fuit vic. quòd mandaret diē captionis, et vic. mandavit diem captionis, et quòd

¹ "horum," MS. Rawl. C. 160.

ceived by himself. But if none of these things have intervened, but his land was claimed by another than himself, then he may contest both summonses, if both have been testified and proved. But if neither, then he is released from the default. But if one only, then it is incumbent that he should contest that in the same way as above. But if both, and he has failed in the proof of both, he will be in default; and in the same manner in the proof of one, and the seysine will be adjudged to the claimant. But if he has made his law in both, the seysine will be reformed to him that he may forthwith answer. But if he has contested the first summons and has acknowledged the second, he will be in default unless he has alleged and proved an illegitimate impediment. And in which case, although the impediment has been proved to be legitimate, if the land taken in the hand of the lord the king has not been legitimately claimed at the proper hour by a plevin.

Let us return to a judgment after a second default and the caption of the land or other thing into the hand of the lord the king, where the tenant has not appeared at all, neither on the first day, nor on the second, nor on the third, nor on the fourth, by himself nor by a messenger, as above explained, in which case his default cannot be excused, and therefore judgment follows in these words.

9.
If a default has been made, how proceedings are to be had.

A. who is present, to wit, has claimed against B. so much land with its appurtenances in such a vill as his right, and B. has not come and has been summoned elsewhere, and the summons has been testified or has not been denied, and so that the land has been taken into the hand of the lord the king through the default, which the said B. has made on such a day, and he himself has been again summoned that he should attend on this day, and he has not come, and a mandate has been sent to the viscount that he should announce the day of caption, and he has announced the day of caption and that he was

10.
An enrolment after a default.

sumonit⁹ fuit, nec terra petita fuit p plevinā, vel si petita fuerit, non fuit petita ad horā, et ideo consideratum est q A. recuperet seysinam suam, et B. in misericordia, & fiat postmodū irrotulatio iudicii sub eisdem verbis, A. optulit se quarto die versus B. de placito tali &c. ut supra, & breve de facienda seysina tale erit.

11.
Breve de
seysina
habenda
postquam
quis recu-
peravit per
defaltam.

Rex vic. salutē. Scias quòd A. de N. in curia nostra coram iusticiariis nris apud talē locum, p cōsiderationē ejusdē curiē nostræ recuperavit seysinam suam de tanta terra cum ptinentiis in tali villa, ut de jure suo, vel ut de dote sua, versus B. de N. per defaltā ipsius B., et ideo tibi præcipimus q ipsi A. de p̃dicta terra sine dilatione plenariā seysinam habere facias. Teste &c. Et ita fit missio in seysinam quasi ex secūdo decreto post captionē terræ in manū dñi regis, cū illa captio sit quasi prima missio.

CAP. II.

1.
Quale com-
petat reme-
dium te-
nenti post-
quam ami-
serit per
defaltam, et
usque ad
quod
tempus.

Cum autem tenens ita amiserit per defaltam, videntum si q remedium competat ei qui sic amisit, & quale. Et sciendum q competit ei remedium, & recuperare per breve de recto omni tempore si placitare voluerit, quousque tenens posuerit se in magnam assisam, ita q quatuor milites summoniti fuerunt ad eligendum duodecim secundum quosdam, & secundum alios quousque duodecim electi fuerint. De hoc autem contentio fuit inter veteres, & eodem modo (ut videtur) donec tenens duellū vadiaverit, si duellū elegerit: ad paria enim judicatur in multis magna assisa et duellū, & tunc vero deinceps non habebit quis aliud recuperare, quia abjudicabitur sibi & hæredibus suis seysina im-

summoned, and the land was not claimed by a plevin, and therefore it was resolved that A. should recover his seysine and B. should be amerced, and let the judgment be afterwards enrolled in these words : A. presented himself on the fourth day against B. in such a plea &c. as above ; and the writ for giving seysine will be of this kind. f. 367.

The king to the viscount greeting. Know thou, that A. de N. in our court before our justiciaries in such a place, by the resolution of our said court has recovered his seysine of so much land with its appurtenances in such a vill, as of his own right, or as of his dower, against B. de N. through the default of the said B., and accordingly we enjoin you that you cause the said A. to have plenary seysine without delay of the said land. Witness &c. And so mission into seysine is made as it were upon a second decree after the caption of the land into the hand of the lord the king, since that caption has been as it were the first mission. 11. A writ for having seysine after a person has recovered through a default.

CHAPTER II.

But when a tenant has lost through default, it is to be seen if any remedy is allowable to him, who has so lost, and what sort of remedy. And it is to be known, that he is entitled to a remedy and to recover through a writ of right at all times, if he should wish to sue, until the tenant has put himself upon a great assise, so that four knights have been summoned to choose twelve according to some, and according to others until twelve have been chosen. But respecting this there has been a contention amongst the older men, and in the same manner (as it seems) until the tenant has waged a duel, if he has chosen a duel : for in many things a great assise and a duel are judged alike, and then indeed from that time he shall not have another recovery, because the seysine will be judged away from him and his heirs for ever. But 1. What sort of remedy is allowable to a tenant after he has lost through default, and up to what time.

perpetuum. Propter dissensum vero antiquorum non poterit teneri aliquod certum quid fieri debeat, si defalta facta fuerit cū quatuor milites sūmoniti sint ad eligendum, cum quidam dicant sic, quidam contrarium. Sed tamen q̄ recuperare suum debeat habere in hoc ultimo casu, pbatur in rotulo de termino P. anno regis H. decimo sexto in cōm Oxoñ, de Fray Pinchard,¹ ubi ipse nec hæredes sui præcisè fuerint abjudicati, sed quòd haberent tale recuperare, quale habere deberent. Sed quòd nullum habere debent postquàm duodecim electi fuerint, sed ex toto abjudicantur, probatur in rotulo de termino Sancti Michaelis anno regis Henrici quarto incipiente quinto in comitatu Buck., de Johanne filio Rowlandi. Et ad hoc concordant alii plures casus. Itē habere poterit remedium tenens qui amisit, si fraudulenta deceptio petentis intervenit, ubi nulla omnino summonitio facta fuit, mentitur tamen fieri, & hoc detecto nec captio aliqua nec abjudicatio per defaltam. Et si iudicium reddatur in hoc casu pro petente, quicquid actum fuerit revocabitur secundum quod superius dicitur.² Item habebit tenens suum recuperare, ubi in absentia sua cum peregre profecturus fuerit abjudicata fuerit ei seysina, cum summonitione præventus non fuerit, ut supradictum est. Sed per quale breve videndum, quia justic. non sunt in culpa, nec etiam petens, cū hoc factum sit per imperitiam summonitorum, qui testati sunt legitimam esse summonitionem. Via igitur melior est (ut videtur) q̄ tenens dicat se esse injuste dissesitum quamvis cum iudicio, quia injuste, eo q̄ per injustum iudicium. Et unde cū petens qui recupera-

1 367 b.

¹ "Punchard," MS. Rawl. C. 160. | ² "dicitur," MS. id.

on account of the dissension amongst the ancient authorities nothing certain can be maintained as to what should be done, if the default has been made, when the four knights have been summoned to choose [the twelve], since some say so, and others the contrary. But nevertheless, that he ought to have his recovery in this last case is proved in the roll of Easter term in the sixteenth year of king Henry in the county of Oxford, concerning Fray Pinchard, where neither he nor his heirs were precisely adjudged to be out of court, but that they should have such a recovery as they ought to have. But that they ought not to have any recovery after the twelve knights have been elected, but should be adjudged totally out of court is proved in the roll of St. Michael's term in the fourth and fifth years of king Henry in the county of Bucks, concerning John the son of Rowland. And with this many other cases accord. Likewise the tenant, who has lost, may have a remedy, if a fraudulent deception has intervened on the part of the claimant, where no summons at all has been made, but he falsely says that it has been made, and upon this having been detected there is neither any caption nor adjudication through default. And if judgment be rendered in this case for the claimant, whatever has been done will be revoked, according to what has been explained above. Likewise the tenant will have his recovery when in his absence, if he has gone on a journey abroad, his seysine has been adjudged away from him, when he has not been anticipated by a summons, as explained above. But by what writ is to be seen, because the justiciaries are not in fault, nor even the claimant, when this has been done through the inexperience of the summoners, who have testified to a legitimate summons. The better way therefore is (as it seems), that the tenant should say, that he has been unjustly disseysed, although with a judgment, because he has been unjustly disseysed, inasmuch as he has been so through an unjust judgment. And hence when the claimant who has recovered shall answer to the f. 367 b.

vit responderit ad assisam & seysinam, vocare poterit curiam regis ad warrantum, q̄ quidem decepta fuit, per quam quidem poterit talis processus & tale iudicium revocari.

CAP. III.

1.
Qualiter
sanatur
defalta per
servitium
domini
regis.

Ante iudicium vero poterit defalta sanari multis modis, sicut iudicium cūm factum fuerit revocari. Inprimis per servitium domini regis, si in servicio suo fuerit, ita quòd mittere non possit nec venire, quia servitium domini regis nulli debet esse damnosum, nec etiam ei ita ad commodum, quòd alteri sit injuriosum. Brevia autem de warrantia de servitio domini regis, sub hac forma concepta sunt. Varia sunt enim genera defaltarum. Aut fit defalta coram justic. itinerantibus, aliquando pro communi summonitione, & aliquando pro placito terræ, quo casu fiant brevia in hac forma.

2.
Brevia,
quæ ex-
cusant per
servitium
domini
regis.

Rex dilectis & fidelibus suis justiciariis itinerantibus in tali comitatu salutem. Sciatis quòd talis fuit in servitio nostro tali die apud talem locum, ita quòd in itinere vestro coram vobis esse non potuit tali die pro communi summonitione. Et ideo vobis mandamus, quòd occasione communis sive generalis summonitionis coram vobis factæ de militibus & liberè tenentibus & aliis in itinere vestro, ipsum talem non ponatis, nec poni permittatis in defaltam, quia absentiam suam quoad hoc ei warranti-zamus, vel aliter: quòd talis fuit in servitio nostro &c. ut supra, ita quòd coram vobis esse non potuit in loquela, quæ est inter ipsum & talem de tanto terræ cum pertinentiis in tali villa. Et ideo vobis mandamus, quòd propter absentiam suam ad diem illum coram vobis non ponatur in defaltam nec in aliquo sit perdens, quia diem illum ei warrantizamus. Et eodem modo quo dies warrantizantur,

assise and the seysine, he may vouch the court of the king to warrant, that it has been deceived, through which indeed such a proceeding and such a judgment may be revoked.

CHAPTER III.

But before judgment a default may be cured in many ways, as a judgment when it has been made may be revoked. In the first place through the service of the lord the king, if he has been in his service, so that he could not send nor come, because the service of the lord the king ought not to be damaging to any one, nor on the other hand so advantageous to him that it should be injurious to another person. But writs of warranty concerning the service of the lord the king are drawn up in this form. For there are various kinds of defaults. A default is either made before the justiciaries itinerant, sometimes for a common summons, sometimes for a plea of land; in which case let the writs be in this form.

The king to his beloved and faithful justiciaries itinerant in such a county greeting. Know ye that so-and-so was in our service on such a day at such a place, so that he could not appear before you on your iter on such a day for a common summons. And accordingly we command you, that on the occasion of a common or general summons made before you of the knights and free tenants and others in your iter, you do not place him nor allow him to be placed in default, because we warrant his absence as regards this matter, or otherwise: that so-and-so was in our service &c. as above, so that he could not appear before you in the trial which is between him and so-and-so concerning so much land with its appurtenances in such a vill. And therefore we command you, that on account of his absence on that day before you he be not placed in default, nor be a loser in any respect, because we warrant that day to him. And in the same

1.
How a default through the service of the lord the king may be cured.

2.
Writs, which excuse for the service of the lord the king.

f. 368.

poterit terminus warrantizari ex causa, scilicet à tali die usque ad talem diem, & sic majoris causæ occupatio excusat aliquem et defendit à pœna contumaciæ, sicut facit adversa valitudo, pœnam enim contumaciæ non patitur quem adversa valitudo, vel majoris causæ occupatio defendit. Item sicut locum habet warrantia per breve domini regis in minoribus curiis coram justiciariis de curiis domini regis, ita locum habebit de curiis domini regis in comitatu, vel in curiis baronum, vel aliorum qui curias habent de placitis et sectis, et aliis quæ in comitatibus vel in curiis placitari possunt vel terminari, et tunc sic: Scias quòd A. de N. fuit in placito, vel in quadam assisa vel iurata (vel alia de causa, secundum quod necessitas exigerit) in curia nostra coram justiciariis nostris apud talem locum tali die per præceptum nostrum, ita quòd ad diem illum coram te in comitatu tuo esse non potuit pro loquela, quæ est in eodem comitatu tuo inter ipsum talem et talem de tanto terræ, vel de qualicunque alia re, vel aliter si terminus warrantizari debeat: Scias q talis &c. fuit coram nobis in placito tali die, et in crastino et tertio et quarto die, vel à tali die usque ad talem, vel tali die ita quod tali die coram te esse non potuit, nec in crastino, ita quòd totum tempus computetur, quo fuit coram justiciariis in curia domini regis, et omnes dietæ in veniendo versus patriam, ut sciri possit q ita legitima sit excusatio de toto tempore illo, et tunc dicatur: et ita q infra terminum illum coram te in comitatu tuo in tali placito esse non potuit. Et ideo tibi præcipimus quòd propter absentiam suam infra terminum illum coram te in comitatu tuo non ponatur in defaltam, nec in aliquo

manner in which the day is warranted, a term may be warranted from a cause, to wit, from such a day to such a day, and so the occupation of a more important cause excuses a person and defends him from the penalty of contumacy, as does adverse health, for a person does not suffer the penalty of contumacy, whom adverse health or the occupation of a more important cause defends. Likewise just as a warrant by a writ of the lord the king has place in the minor courts before the justiciaries of the courts of the lord the king, so it will have place from the courts of the lord the king in the county court and in the courts of the barons, or of others who hold courts of pleas and sects, and of other matters which may be pleaded and terminated in the county courts or in the other courts, and then thus: Know thou, A. de N. was in a plea, or in a certain assise or jury (or for some other cause, according as necessity has required) in our court before our justiciaries at such a place on such a day through our precept, so that on that day he could not be in thy court before thee for the trial, which is in thy said county court between the said so-and-so and such a person concerning so much land, or concerning any other thing whatsoever, or otherwise if a term ought to be warranted: Know thou that so-and-so &c. was present before us in a plea on such a day, and on the morrow, and on the third day, and on the fourth day, or from such a day up to such a day, or on such a day so that on such day he could not appear before you, nor on the morrow, so that the whole time be computed in which he was in the presence of the justiciaries in the court of the lord the king and all the days' journeys in coming towards his country, that it may be known that thus the excuse for the whole time is legitimate, and then let it be said: and so that he could not be within that term before you in your county court in such a plea. And therefore we enjoin you that he be not placed in default on account of his absence within that term before you in your county court, nor be a loser in

f. 368.

sit perdens, quia terminum illum ei warrantizamus. Vel aliter, quòd propter absentiam suam ad diem illum vel infra terminum non ponant eum in defaultam, nec in aliquo coram te occasionetur per quod sit perdens, quia diē illum sive terminum illum ei warrantizamus. Teste &c. Et eodem modo scribatur ballivis curiarum. Et qualiter formari debeat breve satis perpendi poterit ex præmissis. Item possunt justiciarii scribere eodem modo vicecomitibus et ballivis curiarum nomine proprio, sed tamen ex parte domini regis hoc modo: Scias vel sciatis &c. ut supra. Et ideo tibi vel vobis mandamus ex parte domini regis, quòd propter absentiam suam &c. ut supra. Et sic excusat magis magis adjutorium¹ aliquem à defaulta in iudicio minori. Et eodem modo excusat consimile adjutorium² vel æquale, ut si justic. de banco suo nomine scripserint justic. itinerantibus, vel è contrario: licet par in parem non habet imperium. Et tunc dicatur, A. B. et socii sui itinerantes in tali com. vel justic. de banco dilectis amicis et sociis suis A. B. et sociis suis itinerantibus in tali com (secundum quod se ipsos velint præponere vel postponere in mandato) & tunc, sciatis ut supra. Et notandum quòd dñs rex nec alius poterit aliquem sic warrantizare, vel defaultam sanare, quòd quis aliquid lucretur ab adversario per absentiam, sed quòd indemnis observetur. Item nec quòd iudicium differatur³ de aliquo quod sit contra pacem domini regis, sicut de utlagaria, & hujusmodi, sicut de Richard Syward in comitatu Gloc. inter placita quæ sequuntur regem, anno regni sui tricesimo tertio, & ita obtinet

¹ "excusat majus auditorium," MS. Rawl. C. 160 & 159.

² "consimile auditorium," MSS. eadem.

³ "differatur," MS. Rawl. C. 160.

any respect, because we warrant to him that term. Or otherwise, that they should not on account of his absence on that day, or within that term, place him in default, nor that he should be prejudiced before you in any way that he should be a loser, because we warrant to him that day or that term. Witness &c., and in the same way let writings be sent to the bailiffs of the courts. And in what manner the writ should be drawn up may be sufficiently understood from the premises. Likewise the justiciaries may write in the same manner to the viscounts and bailiffs of the courts in their own name, but nevertheless on the part of the lord the king, in this manner. Know thou or know ye &c., as above. And accordingly we command thee or you on the part of the lord the king, that on account of his absence &c. as above. And so a superior auditory excuses a person from a default in an inferior court. And in the same way a similar or equal auditory excuses, as for instance if the justiciaries of the bench have written in their own name to the justiciaries itinerant or contrariwise, although equal has no empire over equal. And then let it be said, A. and B. and their associates itinerant in such a county, or the justiciaries of the bench to their beloved friends and associates A. and B. and their associates itinerant in such a county (according as they wish to place themselves first or last in order in the mandate), and then know ye as above. And it is to be noted that neither the lord the king nor any other person can so warrant any one or cure a default, that any one should gain anything from his adversary through his absence, but only that he should be kept from loss. Likewise nor that a judgment should be deferred on any matter which is against the peace of the lord the king, as concerning an outlawry and such like, as concerning Richard Syward in the county of Gloucester, amongst the pleas which follow the king in the thirty-third year of his reign, and so it prevails that

quòd major curia et æqualis excusat et defendit à defalta, minor autem nunquam in majori.

3.
Qualiter
excusatur
absentia
multis
modis.

f. 368 b.

In fine notandum, quòd sola absentia facit contumacem, nec probari debet, licet sufficit sola absentia, nisi fuerit rationabiliter excusata quòd necessaria fuerit, et non voluntaria, secundum quod necesse ponitur pro inevitabili, et ideo necessitas excusat, non voluntas, scilicet non nolle, sed impotentia per necessitatem. Necessitas autem aliquando præcedit summonitionem et excusat à defalta, quandoque concomitatur summonitionem et quandoque sequitur et evenit post summonitionem, et quandoque provenit excusatio non ex necessitate. Procedit¹ aliquando sūmonitionem necessitas et excusat, ubi licet sūmonitus fuerit quis legitime, ad domicilium tamen venire non potest, nec mittere, nec sibi providisse poterit propter necessitatem præcedentem summonitionem, ut si se essioniare posset vel facere attornatum, ut si ante sūmonitionem captus fuerit quis et imprisonatus, & ita in prisona arctatus quòd venire non possit, nec mittere, secundum quod causa fuerit civilis vel criminalis. Item nec sibi providisse ut supradictum est. Itē eodem modo si ante sūmonitionem effectus sit non sanæ mentis q̄ summonitioni consentire non possit nec sūmonitionem recipere. Item si tam gravi infirmitate detentus sit ante sūmonitionem q̄ discernere non possit, nec aliud cogitare nisi sit dolor & pœna.² Item si in servitio dñi regis detentus fuerit, non affectans fraudulenter illam necessitatem serviendi, nec procurans, cū sic commode venire non possit, nec mittere nec sibi providisse, excusatur ex tali necessitate,³ et talis necessitas multotiens concomitatur summonitionem & præcedat,⁴ & ista necessitas

¹ "Præcedit," MS. Rawl. C. 160.

² "nisi quid sit dolor et pœna,"
MS. Rawl. C. 160.

³ "a tali necessitate," MS. id.

⁴ "præcedit," MS. id.

the superior and the equal court excuses and defends a person from a default, but the inferior never so in the superior court.

In the end it is to be noted that absence alone makes a person contumacious, nor ought it to be proved, although absence alone suffices, unless it has been reasonably excused that it was necessary, and not voluntary, according as necessary is used to signify what is inevitable, and accordingly necessity excuses, not the will, to wit, not unwillingness, but want of power through necessity. But necessity sometimes precedes a summons and excuses from default, sometimes it accompanies it, and sometimes it follows it and happens after the summons, and sometimes the excusation proceeds not from necessity. The necessity sometimes precedes and excuses the summons, where, although a person has been legitimately summoned, he cannot come nor send to his domicile, nor will he be able to provide for himself on account of some necessity preceding the summons, as if he might have essoined himself or have constituted an attorney, as for instance, if before the summons a person has been captured and imprisoned, and so closely confined in prison that he cannot come nor send, according as the cause be civil or criminal. Likewise nor to have provided for himself as aforesaid. Likewise in the same manner, if before the summons he has been rendered of unsound mind, so that he could not consent to the summons, nor receive the summons. Likewise if he be detained by so grievous an infirmity before the summons that he could not discern, nor think of anything else unless it be suffering and pain. Likewise if he has been detained in the service of the lord the king not affecting fraudulently the necessity of serving him, nor procuring it, when thereby he could not conveniently come, nor send, nor provide for himself, he is excused upon such necessity, and such necessity very frequently accompanies the summons and precedes it, and that ne-

3.
In what
manner
absence in
many ways
is ex-
cused.

f. 368 b.

excusat à defalta, si probetur, & à pœna, & impedit judicium. Et si continuæ fuerint hujusmodi necessitates, ita quòd infra quartū diem post defaltam pponi non possint nec pbari, & pcedat judicium contra tenentem, si post judicium pponantur et pbentur, judicium et quicquid actum fuerit revocabitur.

Eodem modo excusatur, si quis peregrè pfectus fuerit ante suṁonitionem q̄ sibi providere non potuit ut supra. Item est quædam necessitas superveniens & sequens suṁonitionem, ut si summonitus legitimè post summonitionem inciderit in casus fortuitos, qui prævideri non poterunt, de quibus paulò ante dictum est. Et in quibus casibus omnibus, si petens docere possit impedimentum esse illegitimum & necessitatem non legitimam vel nullam, vel aliter esse quàm tenens proposuerit: ex tali insinuatione sive negatione fit res dubia, quo casu oportebit quòd veritas requiratur, & secundum hoc fiat judicium vel non defaltarum, vel si forte factum fuerit, revocabitur vel tenebit. Sed quid si ante judicium de defalta vel post, ostenderit tenens breve domini regis de warrantia, quòd fuit tali die in servitio suo in forma supradicta, quòd esse non potuit coram justiciariis eodem die in judicio, cū forte in nullo servitio domini regis extiterit, quia visus fuit eodem die coram justiciariis suis qui habent recordum, & inde contumaciter recessit, ita q̄ judicium præcessit contra ipsum de defalta, vel q̄ alibi fuit longe à loco ubi esse debuit in servitio, quod petens sit statim paratus probare. Item etsi in servitio fuerit, potuit sibi ante servitiū pvidisse, vel si in servitio fuerit nec potuit venisse

cessity excuses from default, if it be proved, and from punishment, and impedes a judgment. And if necessities of this kind have been continuous, so that within the fourth day after the default they cannot be propounded nor proved, and judgment should proceed against the tenant, if after judgment they should be propounded and be proved, the judgment and whatever has been done shall be revoked.

In the same manner he is excused, if any one has set out on a journey abroad before the summons, so that he could not provide for himself. Likewise there is a certain supervenient necessity, which follows the summons, as if a person legitimately summoned has after the summons fallen into some fortuitous casualties which could not be foreseen, concerning which we have spoken a little above. And in all of which cases, if the claimant can show that the impediment is illegitimate and the necessity not legitimate or null, or otherwise than the tenant has propounded, by such an insinuation or denial the matter is rendered doubtful, in which case it will be incumbent that the truth should be sought out, and according to this let there be a judgment or not of the defaults, or if by chance it has been made, it shall be recalled or it shall hold good. But if before the judgment concerning the default or after it the tenant shall have shown the writ of the lord the king concerning warranty, that he was on such a day in his service, in the form above stated, so that he could not be before the justiciaries on the same day in court, when by chance he has not been in any service of the lord the king, because he was seen on the same day before his justiciaries who have a record, and he has thence contumaciously withdrawn, so that judgment has proceeded against him through his default, or because he was elsewhere at a distance from where he ought to have been in service, which the claimant is forthwith prepared to prove. Likewise although he may have been in the king's service he might have

nec sibi providisse, tamen potuit misisse, quia præsens fuit tota die cum ipso rege, quæro an tale testimoniū ipsius regis admittat probationem in contrarium, cū petens excipiat (ut prædictum est) & paratus sit pbare exceptionem? videtur quòd sic, quamvis tale testimonium ipsius dñi regis maximam inducat præsumptionē, vera tamen pbatio debet vincere illum, quæ nulla alia erit, nisi quòd probetur dominum regum & consilium suum per falsam suggestionem esse deceptum, rex enim decipi possit cū sit homo, Deus autem nunquā, cū sit Deus. Et quo casu cū dominus rex super hoc fuerit interpellatus in eadem perstiterit voluntate quòd velit tenentem esse defensū injuria, cū teneatur justiciam totis viribus defensare, extunc erit injuria ipsius domini regis, nec poterit ei necessitatem aliquis imponere quòd illam corrigat & emendet nisi velit, cū f. 269. superiorem non habeat nisi Deum, et satis erit illi pro pœna quòd Deum expect ultorem. Et si justiciar sui necessitatem imponant reg¹ quòd judicium reddant, in hoc casu vel consimilibus ita reddant juditium, q non pro juditio, sed quia dñs rex ita vult, et inde sequitur, quòd juditium potius voluntarium sit quàm justum, si dici debeat juditium. Et quicquid dicatur de facto regis in eo quod est rex, & perinde factum juditium disputari non debet, nec factum à quoquam judicari nec revocari poterit, cū sit justum. Si autem factum injustum fuerit, perinde non erit factum regis. Et cū non sit factum regis quia injustum, inde disputari poterit, et factum judicari, sed idem emendari non poterit, nec

¹ "et si justiciariis suis necessitatem imponat rex," MS. Rawl. C. 160 et 159, et Reg. 9. E. xv.

provided for himself before the service, or if he should have been in his service and could not have come nor provided for himself, nevertheless he could have sent, because he was present during the whole day with the king himself, I ask whether such testimony of the king himself admits of proof to the contrary, when the claimant excepts (as aforesaid), and is prepared to prove his exception? It seems in the affirmative, although such testimony of the king himself induces the strongest presumption, but a true proof ought to overcome it, which will be nothing else than the proof that the lord the king and his council have been deceived by a false suggestion. For the king may be deceived since he is a man; but God never, since he is God. And in which case when the lord the king having been interpellated in this matter has persisted in the same desire that he wishes the tenant to be defended from injury, since he is bound to maintain justice with all his power, it will be henceforth an injury of the lord the king himself, nor can any one impose upon him the necessity to correct and amend it unless he wills it, since he has no superior except God, and it is sufficient for him as punishment that he should expect God as the avenger. And if the king should impose upon his justiciaries a necessity, that they should render judgment, in this case or in con-similar cases they should so render judgment, that it be not taken for a judgment but because the king so wills it, it follows hence that the judgment is rather wilful than just, if it ought to be called a judgment. And whatever may be said of the act of the king inasmuch as he is king, the judgment accordingly made ought not to be disputed, nor can the act be judged nor revoked by any one, when it is just. But if the act shall be unjust, it will be accordingly not the act of the king. And since it is not the act of the king because it is unjust, it may thenceforth be disputed, and the act may be judged, but the said act cannot be amended nor re-

f. 369.

revocari sine eo. Item notandum in fine quòd excusatur contumacia et defalta sine necessitate, sola voluntate, cùm suṃmonitus à non suo iudice venire non teneatur. Et excusatur à defalta ante iudicium & post, cùm fuerit probata. Et eodem modo si pcedat iudiciū cum falso procuratore, quia cum non suo iudice, vel falso procuratore, iudicium nullum, controversia nulla. Item quia venire non tenetur, cùm nullam habeat suṃmonitionem, vel minus legitimam. Et quo casu non habet necesse venire ut respondeat de placito, sed ut alleget & probet summonitionem nullam vel minus legitimam. Et eodem modo si peregre profectus fuerit ante summonitionem suṃmonitione non præventus ut supradictum est.

4.
Si post
defaltam
capiatur
dies
amoris.

In fine notandum quòd, si post defaltam factam ante iudicium capiatur dies amoris, vel translata sit loquela ab uno iudicio ad aliud, ad instantiam et pcurationem petentis, qui lucrari deberet per defaltam et hoc simpliciter, nulla facta mentione de defalta, videtur per hoc quòd petens tacitè renunciat defaltæ, et ideo ad defaltam ulteriùs regressum non habebit. Et si hoc non fuerit per petentem sed per officium iudicis vel ex voluntate regis, vel ex necessitate aliqua, vel forte ad procuracionem tenentis, aliud erit. Et si dies amoris capi debeat, expedit petenti quòd mentionem faciat de defalta, & q diem amoris capiat sub tali protestatione, q si amor se non capiat, salvus sit ei regressus ad defaltam, et durante placito & defalta in eodem statu in quo fuit die quo dies amoris captus fuit, & si talis forte non fiat protestatio, et dies amoris

voked without him. Likewise it is to be noted in the end that contumacy and default without necessity are excused, though wilful, when a person upon a summons from one who is not his proper judge is not bound to come. And he is excused from default before judgment and after it, when it has been proved. And in the same way if judgment proceeds with a false proctor, because with a judge who is not the proper judge or with a false proctor there is no judgment, there is no lawsuit. Likewise because he is not bound to appear, since he has had no summons or not a legitimate one. And in which case he is not under the necessity of coming to answer concerning the plea, but to allege and prove that the summons is null or not legitimate. And in the same manner, if he has set out on a foreign journey before the summons, not anticipated by the summons as above said.

Finally it is to be noted that, if after a default has been made a day of love be taken before judgment, or the cause be transferred from one court to another court, at the instance and procuration of the claimant, who ought to gain through the default, and this simply, no mention having been made of the default, it seems thereby that the claimant tacitly renounces the default, and therefore he cannot have any further recourse to the default. And if this be not done through the claimant, but through the office of the judge and from the will of the king, or from some necessity, or by chance at the procuration of the tenant, it will be different. And if a day of love ought to be taken, it is expedient for the claimant that he should make mention of the default; and that he should take the day of love under such a protest, that if love shall not take him, a recourse to the default may be open to him, the plea and the default continuing in the same state in which it was on the day on which he took a day of love; and if such protest by chance be not made, and the day of love has not taken effect, if the tenant

4.
If after a
default a
day of love
be taken.

effectum non habuerit, si tenens ad alium diem defaultam fecerit, vix illam salvare poterit. Item erit si petens post defaultam se essoniaverit.

5.
Quis possit
remittere
defaultam.

Et quærendum quis possit remittere defaultam? dominus principalis, vel ejus attornatus, vel warrantus cùm warrantizaverit? Et sciendum quòd ille dominus principalis qui lucrari possit per defaultam: de attornato vero & warranto dubitari posset. Sed si remiserint, videtur quòd tenet remissio, et sibi imputari poterit qui tales elegit.

CAP. IV.

1.
Si in
actione
mixta facta
sit defaulta.

f. 369 b.

Si autem actio mixta fuerit, & tenens defaultam fecerit sicut in partitione hæreditatis, ubi participes & cohæredes agunt ad divisionem hæreditatis inter se, & quilibet actor, & quilibet reus, licet talis actio sit tam in personam quàm in rem, nullum fiat attachiamentum de persona, quamvis hoc fieri posset quadam ratione, eo quòd est mixta & in persona; sed capietur terra in manum domini regis per magnum cape, ut supra, sicut in proparte sororum, vel alibi, ubi res patitur divisionem inter participes.

2.
Si in uno
breui actio
duplex.

Si actio fuerit duplex in uno breui & ubi due concurrunt actiones, scilicet in personam & in rem, primò quòd quis sit ad respondendum quo warranto teneat aliquam rem, & postea addatur in fine, quam rex clamat ut jus suum, vel eschaetam suam, vel de antiquo dominico suo, vel de hujusmodi, licet utraq̃ actio inutilis sit in se, si subtiliter inspiciatur, quoad

has made default upon another day, he can scarcely save that default. The same thing will happen if the claimant after a default has essoined himself.

And it is to be asked who can remit a default? the principal party in the suit, or his attorney, or a warrantor when he has warranted? And it is to be known, that the principal party in the suit, who may gain by the default, but concerning an attorney or a warrantor it may be doubted. But if they have remitted it, it seems that the remission holds good, and he must impute it to himself, who has chosen such persons.

5.
Who can
remit a
default.

CHAPTER IV.

But if there be a mixed action and the tenant has made default, as in the partition of an inheritance, where coparceners and coheirs sue for the division of an inheritance amongst themselves, and each party is a plaintiff and each is a defendant, although such an action is as well against the person as against the thing, let there be no attachment of the person, although this may be done in a certain manner, inasmuch as the action is mixed and against the person, but let the land be taken in the hand of the lord the king by a great *cape* as above, as in a suit for the proportionate share of sisters, or elsewhere, where the estate admits of division amongst the parceners.

1.
If default
be made in
a mixed
action.
f. 369 b.

If there shall be a double action in one writ, and when two actions concur, to wit, against the person and against the thing, in the first place that a person be called on to answer by what warrant he holds any estate, and it be afterwards added at the end "which the king claims as his right, or as his escheat, or as of his ancient domain," or such like, although either action is useless in itself if it be inspected with subtlety, as regards the obtaining the

2.
If there be
a double
action in
one writ.

seysinam consequendam, tamen si tenens defaltam fecerit & concurrat utraque districtio, scilicet attachiamentum, eo quòd una actio personalis est, & alia realis, tamen tenenda est illa districtio quæ magis ligat, & quæ litem & litis protractionem magis restringit, scilicet quòd capiatur terra in manum domini regis per magnum cape, secundum quod superius dicitur.

3. Esto etiam quòd petens defaltam fecerit, & tenens venerit, & breve, offerente se liti tenente quarto die, recedet tenens quietus de brevi illo, & petens in misericordia. Sed si defaltam fecerit ante quartum diem, in quarto die, vel post, ante iudicium defaltæ, bene poterit sanare defaltam suam, excusationibus supradictis, & etiam si iuditium factum fuerit, revocabitur, probata excusatione, & etiam quousque in magnam assisam se posuerit ita quòd quatuor milites summoniti sunt ad eligendum, ut supra de tenente, nō enim licet in hac parte reo, quod actori non liceat. Et quòd tenens remedium habere poterit de defalta & antequam duodecim eligantur, & post iudicium, probatur de termino Paschæ anno regis Henrici decimo quarto, de Paulino de Wychelesse & Stephano de Fredewylle in comitatu Oxon̄ in præsencia Stephani de Seygrave & Radulphi Cicistrensis episcopi tunc cancellarii, & unde Paulinus fuit petens, & sanavit defaltam postquàm quatuor milites summoniti fuerunt ad eligendum duodecim prætextu servitii domini regis.

4. Item si petens non venerit, nec breve ad primum diem, & tenens se essoniaverit, cūm non sit cui respondeatur, nec autoritas, nec warrantus procedendi, non absolvetur tenens omnino à iuditio, sed dicatur

Si petens defaltam fecerit et tenens venerit, si petens possit salvare.

Si petens non venerit, nec tenens se essoniaverit.

seysine, nevertheless, if the tenant has made default and both distrains concur, to wit, an attachment inasmuch as one action is personal and the other real, nevertheless, that distrain is to be maintained which is the more binding, and which restrains the more the suit and the protraction of the suit, to wit, that the land be taken into the hand of the lord the king by a great *cape*, according to what has been said above.

Let it be also that the claimant has made default, and the tenant has come, and the writ, upon the tenant offering himself on the fourth day to contest the suit, the tenant shall retire acquitted from that writ, and the claimant shall be amerceable. But if he has made default before the fourth day, upon the fourth day or, after it, before sentence of default, he may well cure his default by the excuses aforesaid, and even if judgment has been pronounced, it shall be recalled on proof of his excuse, and even until he has put himself upon a great assise so that four knights have been summoned to elect, as above concerning a tenant, for what in this part is not allowable to a plaintiff is not allowable to a defendant. And that a tenant may have a remedy upon a default, and before the twelve are chosen, and after a judgment, is proved in Easter term in the fourteenth year of king Henry, concerning Paulinus de Wychelesse and Stephen de Fredewylle in the county of Oxford, in the presence of Stephen de Segrave and Ralph, bishop of chichester, then Chancellor, and wherein Paulinus was the plaintiff and cured his default after four knights had been summoned to elect twelve upon the pretext of the service of the lord the king.

Likewise if the claimant has not come nor the writ on the first day, and the tenant has es-soined himself, when there is no one to whom an answer should be made, nor any authority nor warrantor for proceeding, the tenant shall not be absolved altogether from a

3.
If the claimant has made default and the tenant has come, if the claimant can save it.

4.
If the claimant has not come nor the tenant has es-soined himself.

f. 370. ei quod eat sicut venit. Et eodem modo fiat de essoniatore suo, si forte fuerit essoniatus. Et eodem modo si petens venerit vice versa, & non breve, nec tenens: dicatur ei illud idem q̄ dicitur tenenti & essoniatori suo in casu consimili. Si autē petens & tenēs venerint vel se essoniaverint ambo vel unus eorum, tunc dari poterit alius dies, etiam si breve non venerit, & dicatur petenti vel essoniatori suo, quòd ad alium diem faciat venire breve suum, & mandabitur vicecomiti ex parte regis &c. Præsumitur enim eo quòd ambo apparent vel se essoniant, q̄ vicecom̃ suscepit breve, & q̄ tenens sum̃onitus fuit, eo tamen excepto à p̃missis, q̄ si ambo p̃sentes fuerint petens & tenens, & b̃re non venerit, si tenens se offerat, & petat iudicium, si debeat sine b̃re respondere, quietus recedet de brevi illo, si diē suum bene intellexerint. Si autem ambo erraverint et maturius venerint quàm deberent, nihilominus tenebit sum̃onitio & breve.

5.
Si unus ex pluribus tenentibus, qui tenent in comune, defaltam fecerit, et alius essoniatus fuerit, et tertius comparuerit.

Item esto quòd unus petens plures implacitaverit tenentes, duos, vel tres, vel plures qui tenuerint in com̃uni, & unus eorum defaltam fecerit, & alius essoniatus fuerit, & tertius comparuerit,¹ nullus sine alio respondebit. Dabitur igitur alius dies ei qui præsens est personaliter, ei vero qui² essoniatus est per essoniatorem suum, contra ipsum vero qui defaltam fecerit procedatur ad defaltam per magnum cape, vel parvum, secundum q̄ ante de defalta comparuerit in curia vel non. Et ita q̄ non tota res quæ petitur capiatur in manum domini regis pro defalta unius, sed quatenus cōtingit portionem suam, scilicet medietas rei petitæ,

¹ "ante defaltam comparuerit," MS. Rawl. C. 160.

² "et ei qui," MS. id.

judgment, but let it be said to him, that he should go away as he came. And in the same way let it be done in regard to his essoiner, if by chance he has been essoined. And in the same way if the claimant has come *vice versâ*, and not the writ, nor the tenant: let there be said to him the same as is said to the tenant and his essoiner in a similar case. But if the claimant and the tenant have come, or both have essoined themselves, or one of them, then another day may be given, even if the writ has not come, and it may be said to the claimant or his essoiner that he should cause his writ to come on another day, and a mandate shall be sent to the viscount on the part of the king, &c. For it is presumed, inasmuch as both appear or esoin themselves, that the viscount has received the writ, and that the tenant has been summoned, with this exception from the premises, that if both should be present, the claimant and the tenant, and the writ has not come, if the tenant has presented himself and claims judgment, if he ought to answer without a writ, he will retire acquitted from that writ, if they have well understood their day. But if both have erred and come sooner than they ought, nevertheless the summons and the writ shall bind them. f. 370.

Likewise let it be, that one claimant has impleaded several tenants, two or three or more, who hold in common, and one of them has made default, and another has been essoined, and a third has appeared, none shall answer without the other. Another day shall therefore be given to him who is present personally, and to him who has been essoined by his essoiner, but against him who has made default let proceedings be had to a default by a great *cape* or a little *cape*, according as he has before appeared upon his default in the court or not. And so that not the whole estate which is claimed should be taken into the hand of the lord the king on account of the default of one, but as far as it touches his portion, to wit, the moiety of the estate claimed, or the third

5.
If one out of several tenants, who hold in common has made default, and another has been essoined, and a third has appeared.

vel tertia pars, vel quarta, sive in propria persona litigaverit sive per attornatum, quia per defaultam attornati amittit dominus litis, sive omnes attornatum fecerint sive unus, & bene poterit unus ex pluribus per defaultam partem suam amittere sine participibus suis, licet sine eis ab initio non teneatur respondere. Et si omnes tenentes unum fecerint attornatum, per defaultam unius attornati poterunt omnes amittere. Item esto quòd unus ex pluribus participibus petentibus defaultam fecerit, & alii omnes in propria persona comparuerint, vel essoniati fuerint, quæritur qualiter erit procedendum versus absentem? Respondeo, omnes qui præsentés sunt vel essoniati habebunt alium diem, & ille qui absens est summoneatur quòd sit ad eundem diem ad sequendum cum talibus participibus suis, si voluerint, per tale breve.

6. Rex vicecomiti salutem. Summoneas per bonos summonitores A. quòd sit coram justic. &c. tali die ad sequendum cum B. C. participibus suis in placito quod est inter prædictos A. B. C. petentes & D. de N. tenentem de tanta terra cum pertinentiis in tali villa si voluerit. Et unde idem D. dicit, quòd non vult eisdem B. C. respondere sine prædicto A., & habeas &c. Teste &c. Et si prædictus A. ad prædictum diem non venerit, nihilominus procedant B. & C. de parte sua, si voluerint. Et quod de uno dicitur fieri poterit de pluribus, si sequi voluerint. Sed quid dicitur de uno particeps & cohærede, qui petit versus particeps & cohæredes suos partem suam cum nihil habeat, & alii totum teneant, et secundum quod res partibilis fuerit ratione tenementi vel ratione rei tantum, vel ratione personarum, habere poterit tale breve de proparte versus particeps suos et petere partem suam, quia actio dicitur mixta, et ita consequetur partem suam,

Si particeps nominatus in brevi sequi noluerit vel non venerit, summoneatur ad sequendum, si voluerit.

f. 370 b.
Britton, iii.
ch. i. §

part, or the fourth part, whether he has contested the suit in his own person or through an attorney, because the principal party in the suit loses through the default of his attorney, whether all have constituted an attorney or only one, and one out of several may well lose his part by default without his coparceners, although he is not bound from the commencement to answer without them. And if all the tenants have made one attorney, they may all lose by the default of that one attorney. Likewise let it be that one out of several coparceners has made default, and all the others have appeared in their own person, or have been essoined, it is asked how shall proceedings be had against the absentee? I answer, all who are present or who have been essoined shall have another day, and let him who is absent be summoned, that he be present on the same day to sue with his coparceners, if he wishes, by a writ of this kind.

The king to the viscount greeting. Summon by good summoners A. that he be present before our justiciaries, &c., on such a day to sue with B. and C. his coparceners, in a plea which is between the aforesaid A., B., C., as claimants against D. de N. as tenant, concerning so much land with its appurtenances in such a vill, if he wishes. And wherein the said D. says that he does not wish to answer without the aforesaid A., and have, &c. Witness, &c. And if the aforesaid A. has not come on the aforesaid day, nevertheless let B. and C. proceed on their own part, if they wish. And what is said of one may be done with several, if they wish to sue. But what is said of one coparcener and coheir, who claims against his coparceners and coheirs his own part, when he has nothing and they hold the whole, and according as the thing is partible in regard of the tenement, or in regard of the thing only, or in regard of the persons, he may have such a writ for his proportionate share against his coparceners, and may claim his part, because the action is called mixed, and so he will obtain his part,

6.
If a coparcener named in a writ is unwilling to sue or has not come let him be summoned to sue, if he wishes so to do.

f. 370 b.

quia assisa mortis antecessoris, nec alia actio locum habebit, nisi actio de proparte, quæ inter cohæredes jus terminat et distinguit. Et quia ad quemlibet ipsorum participum statim & in momento post mortem antecessoris descendit jus merum, quod quidem non erit inter alios cohæredes, cùm non sint partem capientes, quàmvis cohæredes, cùm totum jus merum tantum uni ex pluribus descendat, cùm hæreditas talis divisionem vel partitionem inter cohæredes non patiatur, et ideo semper unus præfertur omnibus aliis, cum sit hæres propinquior multis rationibus ut supra. Et cùm in tali actione mixta plures sunt qui teneant, sive unus petat sive plures, nullus eorum qui tenentes sunt respondebit sine aliis propter contributionem. Si autem plures sunt qui petant versus participes, quilibet petere debet per se, & non in communi cum participes suo petente, quia nullus eorum petit nisi rationabilem partem suam.

7. Si autem vir petierit cum uxore rem uxoriæ, ipsi participes dici non poterunt ratione supradicta, & defalta unius utrique erit damnosa, sive teneant sive petant. Et si tenentes fuerint, & per defaltam utriusque vel alterius terra capta fuerit in manum domini regis, et ita quòd fieri debat iudicium de defalta, si uxor dicat virum suum mortuum esse, licet probationem vel sectam ad manum suam non habuerit, iudicium remanebit in suspenso donec de veritate constiterit, et dabitur utrique eorum dies, et tunc probet uxor mortem et petens vitam: ut de itinere abbatis de Radinge & Martini de Pateshull tam in comitatu Surrey quàm Leycester, de Hugone filio Wilhelmi. Sed quare recurritur ad duas probationes cùm una sufficeret? Quia

Si vir et uxor simul petant, et alter eorum defaltam fecerit.

because neither an assise of mortdancester will have place, nor any other action except an action for a proportionate share, which determines and distinguishes the right between coheirs. And because the mere right descends at once and in a moment after the death of the ancestor to each of the parceners, which will not be the case amongst other coheirs, when they are not taking a part, although coheirs, when the entire mere right descends to one only out of several, when such an inheritance does not admit of division or partition amongst coheirs, and therefore one is always preferred to all the others, since he is the next heir in many ways as above. And since in such an action there are several persons who hold, whether one only or several claim, none of those who are tenants shall answer without the others on account of their contribution. But if there be several who claim against parceners, each ought to claim by himself, and not in common with his parcener claimant, for none of them claim anything but his reasonable part.

But if a husband claims with his wife a thing belonging to his wife, they cannot be called coparceners for the reason abovesaid, and the default of one will be hurtful to both, whether they are tenants or claimants. And if they have been tenants, and through the default of both or of one of them the land has been taken into the hand of the king, and so that judgment ought to be made concerning the default, if the wife should say that her husband is dead, although she has not a proof nor a sect at hand, the judgment shall remain in suspense until it has been ascertained concerning the truth, and a day shall be given to both of them, and the wife shall prove the death and the claimant the life [of the husband]; as in the iter of the abbott of Reading and Martin de Pateshull, in the county as well of Surrey, as of Leicester, concerning Hugh the son of William. But why is recourse made to two proofs when one would

7.
If husband
and wife
claim
together
and one of
them
makes de-
fault.

cūm uxor dicat uxorem esse mortuam,¹ ex tali protestatione non oritur nisi levis præsumptio, & si statim contra ipsam non excipiatur quòd vivat, tenetur in hoc casu probare dictum suum. Et si in probatione defecerit petens recuperabit, & uxor postea tale habeat recuperare quale habere debebit. Si autem petens contra dictum uxoris excipiendo dicat, quòd vivat, propter levem præsumptionem quæ oritur ex dicto uxoris, probet petens contrarium, scilicet exceptionem suam, scilicet vitam. Et in qua si defecerit cadit breve, & tenebit actio in persona uxoris. Et unde videtur quòd, cūm una probatio sufficiat, non est recurrendum ad duas.

8.
Si quis
defaltam
fecerit
antequam
compar-
uerit, si
loquela
translata
ad magnum
curiam.

f. 371.

Videndum est inter cætera quando locum habere debeat breve quod dicitur magnum cape, & breve quod dicitur parvum cape eodem modo. Et regulariter verum est, quòd in omni casu ubi quis summonitionem sibi factam dedicere poterit, & defendere per legem, scilicet antequàm quis in curia comparuerit, scilicet in principio litis, si loquela fuerit in curia domini regis, vel alibi in comitatu vel in curia baronum, vel aliorum qui curiam habent. Item si loquela à comitatu transferatur ad curiam domini regis, licet quis in comitatu se prius posuerit in magnam assisam, ita quòd quatuor milites sumoniti sunt ad eligendum xii. & tenentes in curia dñi regis defaltam fecerint post sumonitionem eis factam per pone, tunc capiatur in manum domini regis per magnum cape: ut de ultimo itinere M. de P. in comitatu Kanc. anno regis H. xii., de Ingeriano de Shoford, qui placitavit in curia per breve de recto. Et ideo quia diu placitasset in comitatu, quæ est una curia, nunquam tamen cōparuit in curia domini regis,

“virum esse mortuum,” MS. Rawl. C. 160 et 159.

suffice. Because when the wife says that the husband is dead, from such a protestation nothing but a slight presumption arises, and if forthwith an exception is raised against her that he is alive, she is bound in this case to prove her assertion. And if she should fail in the proof the claimant shall recover, and let the wife have afterwards such a recovery as she shall deserve to have. But if the claimant against the assertion of the wife shall say by way of exception, that he is alive, let the claimant prove the contrary, to wit, his exception, to wit, his life. And in which if he should fail, the writ falls, and the action in the person of the wife will hold good. And hence it appears that when one proof shall suffice, recourse is not to be had to two proofs.

It is to be seen amongst other things when the writ has place which is called the *great cape*, and the writ which is called the *little cape* in the same manner. And it is regularly true, that in every case, where a person can deny a summons made to himself, and contest it by his law, to wit, before he has appeared in court, to wit, at the commencement of the suit, if the cause should be in the court of the king, or elsewhere in the county court, or in the court of barons, or of others who have a court. Likewise if the cause be transferred from the county court to the court of the lord the king, although a person in the county court has put himself previously upon a great assise, so that four knights have been summoned to choose twelve, and the tenants in the court of the king have made default after a summons has been made to them by a *pone*, then let it be taken into the hand of the lord the king by a *great cape*, as in the last iter of Martin de Pateshull in the county of Kent, in the twelfth year of king Henry, concerning Ingerianus de Shoford, who sued in court by a writ of right. And therefore because he had sued a long time in the county court, which is one court, he had nevertheless never appeared in the court of the lord the king, which is

8.
If a person
has made
default be-
fore he has
appeared,
if the cause
has been
transferred
to the
great
court.

f. 371.

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D D

quæ est alia curia, & ideo defendere poterit suūmonitionem & sursisam, & diem datum contra recordum comitatus per legem. Sed quid si à curia baronis vel alterius propter defaltam, quia forte rectum tenere nolunt vel non possunt, sed p̄bata defalta vel concessa dederit serviens dñi regis partibus diem ad comitatum, si tenens defaltam fecerit, capietur terra eodem modo in manum domini regis quasi per magnum cape, quia testata suūmonitione per servientem, poterit tenens illam defendere per legem. Idem (ut videtur) servari poterit, ubi omnes loquelæ in banco p̄pter iter iusticiariorum vel alia de causa positæ fuerint sine die, & iterum resumoneantur, si tenens post resummonitionem defaltam fecerit, videtur, q̄ captio fieri debeat per magnum cape, quia talem summonitionem defendere poterit tenens per legem, ex quo in curia diem non habuerit postquàm loquela posita fuerit sine die, & ita observetur in omni casu ad quamlibet novam resummonitionem. Sed videtur quasi contrarium, ut si cui bastardia sic objecta fuerit, quòd transmittatur inquisitio de bastardia vel legitimitate ad curiam Christianitatis, & facta inquisitione remittatur inquisitio statim ad curiam regis, partes & loquela quæ posita fuit sine die p̄pter objectionem bastardiæ, resummoniantur q̄ sint ad audiendum iudicium, quo casu si tenens non venerit, capiatur in manum dñi regis p̄ parvum cape, scilicet & q̄ ptes sint audituræ iudicium suū, & poterit esse ratio diversitatis q̄ ex quo quis se p̄baverit legitimū vel adversariū suū ad bastardū, nihil

another court, and therefore he might contest the summons and the neglect, and the day given against the record of the court by his law. But what if the cause be transferred from the court of the baron or another on account of the default, because by chance they are unwilling or they cannot entertain a plea of right, but upon the proof or the admission of the default the serjeant of the lord the king has given to the parties a day at the county court, if the tenant has made default, let the land be taken into the hand of the lord the king in the same manner as it were by a great *cape*, because upon the summons having been testified by the serjeant, the tenant may contest it by his law. The same (as it seems) may be observed, where all causes in *banco* on account of the iter of the justiciaries or some other cause have been put off without a day, and the parties are again re-summoned, if the tenant after the re-summons has made default, it seems that a caption ought to be made by a great *cape*, because the tenant may contest such a summons by his law, since he has not had a day assigned to him in the court, after the cause has been put off without a day, and let it be so observed in every case at every new re-summons. But it seems as it were the contrary, as if bastardy has been so objected to any one, that the inquest concerning bastardy or legitimacy should be transmitted to a court of Christianity, and upon the inquest having been held the inquest should be remitted forthwith to the court of the king, let the parties and the cause which was put off without a day, on account of the objection of bastardy, be re-summoned that they attend to hear judgment, in which case if the tenant has not come, let it be taken into the hand of the lord the king by a little *cape*, and that the parties should be present to hear their judgment, and the reason of the diversity may be this, that from the time when a person has proved himself to be legitimate or his adversary to

superest faciendū nisi tantū judiciū, q non est in aliis casibus.

9.
Parvum
cape, &c.
quis de-
faltam
fecerit,
portquam
in curia
compa-
ruerit.

f. 371 b.

Parvū cape tunc locum habet, cū quis in iudicio semel cōparuerit & diem habuerit corā justiciariis quocunq tēpore vel quacūq ratione, ita q diē & suṃonitionem sequentem dedicere non possit nec defendere per legem, vel si fecerit tenens aliquid per q præsumi possit quòd suscepit summonitionem, ut si, cū suṃonitus fuerit, attornatum fecerit in loquela per quam ad curiam summonitus fuerit, vel quid tale, exinde vero summonitionem dedicere non possit, secundum quod inferiūs dicitur de defaultis post apparitionem. Et generaliter verum est, quòd locum habet captio in manum domini regis per parvum cape, ubi quis defaultam fecerit in placito postq in curia cōparuerit, sive unus implacitatus fuerit sive plures, cum hac tamen distinctione, q si plures implacitati fuerint cohæredes, vel alii participes qui tenuerint in cōmuni, si omnes simul defaultam fecerint postq simul & semel in iudicio cōparuerint, vel vicissim omnes, omnes amittūt, & fiat parvū cape de omnibus. Si autē unus ipsorū tantū, duo vel plures essoniati fuerint primo die suṃonitionis, & quidam eorum defaultam fecerint, & quidam eorum comparuerint, capiatur terra in manum dñi regis de terra quam tenent in cōmuni pro defaulta absentium, pro rata cujuslibet qui absens est per magnum cape, & dabitur præsentibus dies, & ad quem diem si nō venerint cū diem habuerint in iudicio qm dedicere nō poterunt, capiatur de terra cōmuni in manum dñi regis per parvum cape p rata, scilicet pro ea pte quæ singulos eorum qui absentes sunt contingit, & non tota, quia hæreditas & res cōmunis recipit parti-

be a bastard, nothing remains to be done except to pronounce judgment, which is not so in the other cases.

A little *cape* has place then when a person has once appeared in court and has had a day assigned to him before the justiciaries at any time or for any reason, so that he cannot deny the day nor the following summons, nor contest it by his law, or if the tenant has done anything whereby it may be presumed that he has received the summons, as if, when he has been summoned, he has appointed an attorney in the cause for which he has been summoned to the court, or something of that kind, thenceforth he cannot deny the summons, according to what will be said below concerning defaults after an appearance. And generally it is true, that a caption into the hand of the lord the king by a little *cape* has place, where a person has made default in a suit after he has appeared in court, whether one has been sued or more, with this distinction however, that if several coheirs have been impleaded, or other coparceners who have held in common, if they should all make default after they have appeared together and at one time in court, or all in turns, they all lose, and let a little *cape* issue against them all. But if one only of them or two or more have been essoined on the first day of the summons, and some of them have made default, and some of them have appeared, let the land which they hold in common be taken into the hand of the lord the king for the default of the absent, according to the proportion of each who is absent, by a great *cape*, and to those present a day shall be given, and on which day, if they have not come when they have had a day in court, which they cannot deny, let there be taken into the hand of the lord the king by a little *cape* a proportionate part of the common land according to that share of it which belongs to each of the absentees, and not the whole, because the inheritance and common estate admits of partition and division between

9.
A little *cape*, if any one has made default after he has appeared in court.

f. 371 b.

tionem & divisionē inter participes & cohæredes. Sed de viro & uxore non sic, cū res uxoria partitionem vel divisionem non recipiat, cū vir & uxor sint quasi unus sanguis & una caro & unum corpus, nihil enim habet uxor q non sit viri. Et unde cū implacitati fuerint primo die suūmonitionis, antequam cōparuerint uterque fecerit defaltam, tota terra capiatur in manum dñi regis per magnum cape, & idem erit si unus eorum defaltam fecerit, licet alius comparuerit vel se essoniaverit. Si autem uterq defaltam fecerint postquam cōparuerint, capietur terra in manum dñi regis per parvum cape, & idem erit si unus eorum defaltam fecerit, quia defalta unius utriq erit damnosa. Item esto q uxor antequam cōparuerit primo die defaltam fecerit, & vir comparuerit, capietur terra in manum dñi regis per magnum cape, & ipsa suūmoneatur quòd sit ad alium diem, & vir habebit eundem diem, ad quem diem si vir defaltam fecerit & uxor venerit, tunc primò vidēdum an uxor sanare possit defaltam p legē vel alio modo. Si autem defaltam sanare non possit, tunc amittet uterque p defaltā mulieris statim, nec erit vir suūmonendus q sit auditurus iuditiū; si autē defaltā sanaverit, non obstante absentia viri restituetur ei terra, q capta fuit in manum dñi regis per magnum cape p defaltam suam. Et si vir suus infra quartum diem non comparuerit, offerēte se liti petente quarto die versus eū, iterū capietur īra in manū dñi regis per defaltā viri p parvū cape, & ipse suūmoneatur q sit auditurus iuditiū suū, & uxor habeat eundē diē. Forma brevis talis est.

the coparceners and the coheirs. But with regard to a husband and wife it is not so, since the wife's estate does not admit of partition or division, since man and wife are one blood and one flesh and one body, for the wife has nothing which is not her husband's. And hence when they have been impleaded on the first day of the summons, and before they have appeared both have made default, let their whole land be taken into the hand of the lord the king by a great *cape*, and the same thing will happen if one of them has made default, although the other has appeared or been essoined. But if both have made default, after they have appeared, the land shall be taken into the hand of the lord the king by a little *cape*, and the same thing shall be done, if one of them has made default, because the default of one will be damaging to both. But let it be that the wife before she has appeared has on the first day made default, and the husband has appeared, the land shall be taken into the hand of the king by a great *cape*, and let her be summoned to appear on another day, and the husband shall have the same day, on which day, if the husband has made default, and the wife has come, then let it in the first place be seen whether the wife can cure her default by law or in any other manner. But if she cannot cure her default, then both shall lose by the default of the woman forthwith, nor will the husband have to be summoned to hear the judgment, but if she can cure her default, notwithstanding the absence of the husband the land shall be restored to her, which has been taken into the hand of the lord the king by a great *cape* through her default. And if her husband has not appeared within the fourth day, the tenant presenting himself to join issue with him on the fourth day, the land shall be taken again into the hand of the lord the king by a little *cape*, and let him be summoned that he be present to hear his own judgment, and let his wife have the same day.

10.
Forma
brevis,
quod dici-
tur par-
vum cape.

Rex vic. salutē. Cape in manū nostrā tantā terrā, vel advocationē talis ecclesiæ, vel pasturā ad tot oves, cū ptinentiis in tali villa qm A. de N. in curia n̄a corā justiciariis n̄s clamat ut jus suū versus B. p defectu ipsius B., vel sic: clamat ut jus suū versus B. & C. uxor ejus p defectu ipsius B. vel p defectu ipsius C., vel sic, si plures sint pticipes veluti tres: capiatur tertia pars terræ quæ tenetur ī cōmuni, & dicatur, itīā ptem qm talis clamat &c. ut supra. Itē si dos petatur, tunc sic: tertiā partē iræ cū ptinentiis in N. qm A. q̄ fuit uxor B. clamat in curia n̄a &c. ut dotē suam versus C. p defectu ipsius C., & hujusmodi, secundū diversitatē placitorū, & tunc dicatur: Sumōneas p bonos sumōnitores prædictu C. q sit &c. ad talē diē auditurus inde judiciū suū, & habeas ibi sumōnitores & hoc b̄fe. Teste &c. Et ad qm diē si omnino non venerit, expectabitur quartus dies, & quarto die adjudicetur petēti seysina, ita q efficiatur verus possessor, & tenens habeat tale recuperare quale habere debebit, & idē erit si tenens venerit & defaltam sanare non possit. Cū autem non venerit, sic fiat irrotulatio, f. 372. A. obtulit se quarto die versus B. de tali placito &c., & B. nō venit & alias fecit defaltā in curia postqm cōparuerit in curia, vel postqm diem habuerit in banco, vel postqm petiit visū vel vocavit warrātū, & ita q ira capta fuit in manū dñi regis & ipse sumōnitus q esset ad hunc diē auditurus juditiū suū, idē cōsideratum est q A. recuperet seysinā suā & B. in misericordia. Si autē ille qui defaltā fecit psens fuerit

The king to the viscount greeting. Take into our hand so much land, or the advowson of such a church, or a pasture for so many sheep with its appurtenances in such a vill, which A. de N. in our court before our justiciaries claims as his right against B., through failure of the said B. : or thus, which he claims as his right against B. and C. his wife through failure of the said B. or through the failure of the said C. ; or thus, if there be several coparceners as for instance three, let a third part of the land which is held in common be taken, and let it be said, the third part which so-and-so claims &c. as above. Likewise if dower be claimed, then thus : the third part of the land with its appurtenances in N. which A. who was the wife of B. claims in our court, &c. as her dower against C., through failure of the said C., and such like, according to the diversity of pleas, and then let it be said : Summon by good summoners the aforesaid C., that he be &c. at such a day in order to hear thereon his judgment, and have there the summoners and this writ. Witness &c. And on which day if he has not come at all, the fourth day shall be waited for, and on the fourth day let seysine be adjudged to the claimant, so that he be constituted the true possessor, and let the tenant have such a recovery as he will deserve to have, and the same thing will happen if the tenant has come and cannot cure his default. But when he has not come, let the enrolment be made in this manner : A. presented himself on the fourth day against B. in such a plea, &c., and B. has not come and otherwise has made default in the court after he has appeared in the court, and after he has had a day in the bench, and after he has claimed a view or has called a warrantor, and so that the land has been taken into the hand of the lord the king, and he himself having been summoned that he should attend on this day to hear his judgment, therefore it has been resolved that A. should recover his seysine, and B. should be amerced. But if he who has made default has been

10.
The form
of the writ,
which is
called a
little cape.

f. 372.

primo die & excusationē nō habuerit, nec warrātū, tūc variatur irrotulatio sic, A. petiit versus B. tantā terrā cum pertinētis in tali villa, ita q B. habuerit diē postqm in curia cōparuerit, ad qm diē nō venit, nec se essoniavit, & ita q terra capta fuit in manū dñi regis & ipse suñmonitus q esset ad hunc diē auditurus inde iuditiū. Et ipse nūc venit, & nō potest sanare defaltam. Ideo cōsideratum est q A. recuperet seysinā suā, & B. in misericordia, & fiat breve de seysina habēda in cōmuni forma breviū de defaltis. Sed quid si ille tenens¹ qui recuperare deberet p talē defaltā in curia nō cōparuerit ad diē suū, sed defaltam fecerit, primo, secundo, tertio, quarto die, & tenens p̄sens fuerit, petens amittet breve suū p defaltā suā, & tenens retinebit terrā suā qm amissurus esset p defaltā suā, ut de terñ S. M. anno regis H. iii. incipiente iv. circa mediū rotuli. Si autē neuter illorū venerit, tunc (facta cōpensatione defaltæ ad defaltā) petens ad aliū diē quādo voluerit p defaltā tenentis obtinebit.

11.
Si quis defaltam
fecerit in
actione
mixta.

Actiones vero mixtæ q̄ sunt tam in rem qm in psonā, & ubi uterq̄ actor uterq̄ reus, sed ille actor qui primò pvocaverit ad iudiciū sicu inter cohæredes & pticipes, ubi pticeps petit rationabilē ptem suā versus cohæredē & pticipem, sicut ubi hæreditas partibilis sit, vel ratione rei vel ratione psonarū. Item ubi res cōmunis ptibus sit inter alios pticipes qui non sunt cohæredes, & unus agat versus pticipē q res cōmunis dividatur.

¹ "si ille petens," MS. Rawl. C. 159.

present on the first day, and has made no excuse, nor has vouched a warrantor, then the enrolment is varied in this manner: A. has claimed against B. so much land with its appurtenances in such a vill, so that B. has had a day after he has appeared in the court, on which day he has not come nor has essoined himself, and so that the land has been taken into the hand of the lord the king, and he himself has been summoned that he attend on this day to hear judgment thereon. And he himself now comes and cannot cure his default. It has therefore been resolved that A. should recover his seysine, and B. should be amerced, and let a writ issue for having seysine in the common form of writs for defaults. But what if the claimant who ought to recover through such default has not appeared in the court on his day, but has made default on the first, the second, the third, and the fourth day, and the tenant should be present, the claimant shall lose his writ through his default, and the tenant shall retain his land which he was about to lose through his own default, as in St. Michael's term in the third and fourth years of king Henry, about the middle of the roll. But if neither of them has come (then compensation for the one default having been made by the other default), the claimant shall have an adjournment to another day when he pleases through the default of the tenant.

But mixed actions which are directed as well against a thing as against a person, and where either party is a plaintiff, and either party a defendant, but he is the plaintiff who has first applied to a court, as between coheirs and coparceners, where a coparcener claims his reasonable share against a coheir and coparcener, as where the inheritance is partible, either by reason of the thing or by reason of the persons. Likewise where the thing common to the parties is between other parceners who are not coheirs, and one brings an action against a parcener that the common estate should be divided. Like-

11.

If a person has made default in a mixed action.

Itē si inter vicinos cōtentio sit de finibus agrorū, & unus vicinorū petat q̄ fiant rationabiles divisæ inter ipsū & vicinū suū, omnes istæ actiones mixtæ cōnumerari debēt inter actiones q̄ sunt in rem, & nō q̄ sunt in psonā. Et ideo si quis in iis tribus actionibus, vel consimilibus, defaultā fecerit, pcedatur cōtra ipsum sicut pcessum est supra cōtra eos qui defaultā fecerint in actione reali. Et ideo in omni actione ubi duæ cōcurrāt districtiones, videlicet in rem & in psonam, illa districtio tenēda est q̄ magis timetur et magis ligat.

12.
Si duæ
actiones,
quarum
una per-
sonalis et
alia realis,
currant
versus
unum in
uno brevi.

Cum autē duæ actiones sub uno brevi cōprehēdantur, quarū una in psonā & alia in rem, ut si quis sumoneatur q̄ sit ad ostendēdū quo warranto tenuerit talem terrā, & postea adjungat, quam dūs rex clamat esse eschaetam suam vel de antiquo dominico suo, cū hic duæ concurrant districtiones, illa tenenda est q̄ magis ligāt, secūdum q̄ supradictum est, scilicet q̄ terra capiatur in manum dñi regis, (licet quidā faciant contrariū). Si autē in diversis brevibus de qualibet istarū fieret mentio p se, si in brevi quo warranto fieret defaulta, pcederetur ad attachiamētum, & non ad captionem terræ, & de alio brevi è conversò. Si quis igitur impetraverit breve quo warranto, vel quo jure quis terram tenuerit sine aliqua adjectione, nihil poterit petens consequi per tale breve vel per talem actionē, quamvis warrātum non habuerit tenens nec jus aliquod, nihil consequi poterit petens per tale breve, quia probato quòd tenens nihil juris habeat, non tamen probatur p hoc quòd petens jus habeat, & antequam

f. 372 b.

wise if there should be between neighbours a contention concerning the boundaries of fields, and one of the neighbours claims that there should be reasonable divisions between himself and his neighbour, all these mixed actions are accustomed to be comprised amongst actions which are against the thing, and not which are against the person. And accordingly if any person in these three actions or similar ones has made default, let proceedings be taken against him as they have been above taken against those who have made default in a real action. And therefore in every action where two distrains concur, to wit, against the thing and against the person, that distrain is to be maintained which is most feared and is most binding.

But when two actions are comprised under one writ of which one is against a person and the other against a thing, as if a person be summoned that he be present to show "by what warrant" he holds such a land, and it afterwards adds, "which the lord the king claims to be his escheat, or of his ancient demesne," since here two distrains concur, that one is to be maintained, which is the most binding, according to what has been said above, to wit, that the land should be taken into the hand of the lord the king (although some do the contrary). But if in different writs there should be mention by itself of either of them, if there be a default in the writ '*quo warranto*,' proceedings should be had for an attachment, and not for the caption of the land, and concerning the other writ conversely. If therefore any one has sued out a writ of *quo warranto* or of *quo jure* against a tenant of land without any addition, the claimant cannot obtain anything through such a writ or such an action, although the tenant may have no warrantor nor any right, the tenant cannot obtain anything through such a writ, because if it be proved that the tenant has no right, it is not therefore proved that the claimant has any right, and before the claimant can acquire anything

12.
If two actions, of which one is personal and the other real, run against one person in one writ.

f. 372 b.

petens aliquid sibi perquirat, alio brevi et alia actione opus erit. Sed tamē quamvis incivile sit cogi possessorem titulum suæ possessionis dicere per breve quo jure, vel quo warranto; tamen valet ad hoc ut petens scire possit utrum tenens teneat pro hærede vel p possessore, & p hoc qua actione debet experiri: pro hærede autem possidet, qui putat se hæredem esse, pro possessore vero, qui nullo jure rem hæreditariam vel totam hæreditatem, sciens ad se non pertinere, possidet.

CAP. V.

1. Post essonia & dilationes, vel ad primum diem summonitionis per breve de recto in judicio comparentibus tam petente quàm tenente, petens actionem qua agere velit & intencionem suam proponere debet coram justiciariis, ut per hoc speciem futuræ litis demonstret. Et audito brevi de recto, secundum quod fuerit clausum vel apertum, dicat sic petens vel ejus advocatus, in præsentia justiciariorum pro tribunali residentium: Hoc ostendit vobis A. quòd B. injustè ei deforciat tantum terræ cum pertinentiis in tali villa, & ideo injustè, quia quidam antecessor suus nomine C. fuit inde vestitus & seysitus in dominico suo ut de feodo & in jure tempore H. regis avi domini regis, vel tempore regis Richardi avunculi domini regis, vel tempore Johannis regis patris domini regis, tempore H. regis¹ qui nunc est capiendo inde expletia ad valentiam quinque solidorū vel dimidii marcae, sicut in bladis, pratis, redditibus, & aliis exitibus terræ, & de prædicto C. descendit jus terræ illius, vel descendere

Partibus in
judicio
comparen-
tibus qua-
liter petens
proponere
debet in-
tencionem
suam.
De modo
narrandi.

¹ "vel tempore H. regis," MS. Rawl. C. 160.

for himself, he will require another writ and another action. But although it be against the civil law that a possessor should be compelled to disclose the title of his possession through a writ of *quo jure* or of *quo warranto*, nevertheless it is effective for this purpose that the claimant may know whether a tenant holds as an heir or as a possessor, and thereby by what action he ought to proceed; but he possesses as an heir, who believes himself to be an heir, but he possesses as a possessor, who possesses by no right an hereditary estate or an entire inheritance, knowing that it does not belong to himself.

CHAPTER V.

Upon the parties as well the claimant as the tenant appearing in court after essoins and adjournments, or on the first day of the summons under a writ of right, the claimant ought to propound the action by which he means to proceed and his declaration before the justiciaries, that he may thereby make known the species of his future suit. And upon the writ of right having been read aloud, according as it has been a close writ or an open writ, let the claimant or his advocate in the presence of the justiciaries sitting on the tribunal say thus : A. shows this to you that B. unjustly deforces him of so much land with its appurtenances in such a vill, and on these grounds unjustly, because a certain ancestor of his by name C. was clothed and seysed thereof in his own domain as of fee and in right in the time of king Henry the grandfather of the lord the king, or in the time of king Richard the uncle of the lord the king, or in the time of king John the father of the lord the king, or in the time of king Henry who now is, by taking thereof profits to the value of five shillings or of half a mark, for instance in grain, meadows, rents, and other produce of the soil, and from the aforesaid C. the right in that land

1.
Upon the parties appearing in court, in what way the claimant ought to propound his declaration. Of the manner of declaring.

debut (secundum quosdam) cuidam D. ut filio & hæredi, & de prædicto D. cuidam E. ut filio & hæredi, & de prædicto E. isti A. qui nunc petit ut filio & hæredi, & quòd tale sit jus suū, offert disrationare per corpus talis liberi hominis sui, vel alio modo sicut curia consideraverit. Non enim sufficit simpliciter proponere intentionem suam sic dicendo, Peto tantam terram ut jus meum, nisi sic illam fundaverit, quòd doceat ad ipsum jus pertinere, & per quam viam & per quos gradus jus ad ipsum debeat descendere.

2. Item cū agat per breve de recto ad utrumque jus consequendū, scilicet tam jus possessionis qm pprietatis, de seysina talis antecessoris, non sufficit si dicat q talis antecessor suus fuit seysitus in dominico suo ut de libero tenemento tantum, vel in dominico suo ut de feodo tantum, nisi doceat q in dominico suo ut de feodo, q sub se continet liberum tenementū & totū jus possessorīū, nisi dicat & adjiciat, & jure, quod sub se cōtinet jus pprietatis. Itē nō sufficit ista duo jura simul cōprehendere, scilicet jus possessorium & pprietatis, sicut *dreit dreit*, nisi antecessor talis tenuerit terram illam in dominico suo, quia nō sufficit, si tantum in servitio, ad hoc quòd ille qui petit de seysina tali aliquid per tale breve acquirere sibi possit in dominico, quia talem seysinam petit hæres, qualem habuit antecessor, nec variare poterit, licet contingat aliquando quòd quis per breve de recto partim possit petere in dominico & partim in servitio, quod non erit de seysina & facto antecessoris, sed de facto & feoffamento injuste deforciantis, vel alicujus sui antecessoris. Et quo casu, cū petens petat in servitio quod habere possit in dominico, sibi possit imputari, secundum
- De articulis, quibus uti debet in narratione.
- f. 373.

has descended or ought to descend (according to some) to a certain D. as the son and heir, and from the aforesaid D. to a certain E. as the son and heir, and from the aforesaid E. to the said A. the present claimant as the son and heir, and that such is his right he offers to prove by the body of so-and-so his free man, or in any other way as the court may resolve. For it is not sufficient to propound simply his declaration by saying, I claim so much land as my right, unless he has so grounded it, as to show that it belongs to his right, and through what way and by what degrees the right ought to descend to him.

Likewise when he seeks by a writ of right to obtain both rights, to wit, the right of possession as well as the right of property, from the seysine of such an ancestor, it is not sufficient if he should say that so-and-so his ancestor was seysed in domain as of a free tenement only, or in his domain as of fee only, unless he states that he was seysed in his domain as of fee, which implies the free tenement and all the possessory right, unless he says and adds "and of right," which implies the right of property. Likewise it is not sufficient to comprise those two rights together, to wit, the possessory right and the right of property, as *dreit dreit*, unless the said ancestor held that land in his domain, because it is not sufficient, if he has held it only under service, for the purpose that he who claims it upon such seysine should acquire for himself any thing in domain by such a writ, because the heir seeks such a seysine, as his ancestor had, nor can he vary it, although it may happen sometimes that a person by a writ of right can claim partly in domain and partly under service that which will not be of the seysine and the act of his ancestor, but of the act and the feoffment of an unjust deforcor, or of some ancestor of his own. And in which case when the claimant claims under service what he may have in domain, it may be imputed to himself according to what

2.
Of the
articles,
which he
ought to
use in his
declara-
tion.

f. 373.

quod inferius dicetur plenius. Item non sufficit, si dicat quòd antecessor suus fuit seysitus ut de feodo & jure & in dominico suo, nisi adjiciat quòd expletia ceperit, quia licet quis liberum tenementum habere possit & feodum sine expletiis in causa possessionis, secundum quod videri poterit superiùs in intentione querentis & petentis in assisa novæ disseysinæ, & mortis antecessoris; non tamen debet esse ita momentanea seysina proprietatis, quin capiantur expletia. Et ideo si non fiat mentio de expletiis, cadit actio petentis. Item adjicitur in narratione, tempore talis regis, certum enim oportet exprimere tempus, & certum regem de cujus tempore loquatur. Et de tenera seysina & momentanea sine usu & expletiis nunquàm competat actio per breve de recto super proprietate: sed tantum assisa novæ disseysinæ de disseysina propria, vel assisa mortis antecessoris de seysina antecessoris, & qui assisas omiserit in hoc casu & processerit ad breve de recto super proprietate, omnino amittet sine recuperatione.

3.
Qualiter
breve de
recto limi-
tetur.

cf. Stat.
Merton, 20
H. iii.

Quia breve de recto sicut alia brevia infra certum tempus limitatur, non enim excedit tempus regis Henrici avi domini regis. Et est ratio, quia ultra tempus illud non poterit quis aliquid probare, licet jus habeat in re: cùm nullus aliquid pbare possit ultra tempus illud, ex quo loqui non poterit de visu suo proprio, vel de visu patris sui, qui ei injunxit quòd testis esset si inde audiret loqui. Et unde si quis loqueretur de tempore Henrici regis senis, amittere possit propter defectum probationis. Item ideo fit mentio de tempore certi regis, quia si nunquàm tempore talis regis fuit antecessor in seysina, quamvis tempore alterius regis, amittere posset petens per errorem ac si antecessor talis nunquàm inde esset in seysina. Et unde cū

shall be said more fully below. Likewise it is not sufficient, if he should say that his ancestor was seysed as of fee and of right and in his own domain, unless he should add that he has taken profits, because although a person may have a free tenement and a fee without profits in a cause of possession, according to what may be seen above in the declaration of a plaintiff and claimant in an assise of novel disseysine and of mortdancer, nevertheless the seysine of the property ought not to be so momentary, that he has not had any profits. And therefore if there is no mention of profits, the action of the claimant falls. Likewise there is added in the declaration "in the time of such a king," for it ought to express a certain time, and a certain king concerning whose time it should speak. And an action by a writ of right concerning property would never be allowable upon a tender and momentary seysine without the use and profits, but only an assise of novel disseysine concerning one's own disseysine, or an assise of mortdancer concerning the seysine of an ancestor, and he who has omitted the assises in this case and has proceeded to a writ of right concerning the property, will lose it altogether without recovery.

Because a writ of right, like other writs, is limited within a certain time, for it does not exceed the time of king Henry the grandfather of the lord the king. The reason is because no one can prove anything beyond that time, since he cannot speak of his own sight, nor of the sight of his father, who enjoined him to be a witness, if he should hear speak of it. And hence if any one should speak of the time of king Henry the elder, he may lose through failure of proof. Likewise for this reason mention is made of a certain king, because if his ancestor never was in seysine in the time of such a king, although in the time of another king, the claimant may lose by the error, as if his said ancestor had never been in seysine thereof. And hence when any one after such

3.
In what
way a writ
of right is
limited.

quis post talem errorem inde se posuerit in magnum assisam, dat aliquando tenens de suo pro habenda mentione de tempore. Vel ideo fit mentio de tempore quia talis antecessor tempore talis regis non fuit in rerum natura, vel quia prius mortuus, vel tunc non natus.

4.
Quod
tenens
poterit
mutare
intentionem suam
in parte.

Cùm autem per errorem aliquando fiat mentio de tempore indebito, si ipse petens erraverit, poterit intentionem suam mutare & errorem revocare, & loqui de tempore alterius regis usque ad litis contestationem, scilicet quousque fuerit præcisè responsum intentioni petentis, & ita quòd tenens se posuerit in magnam assisam, vel defenderit per duellum. Ulterius autem nequaquàm, cùm facta fuerit mentio de tempore. Et de hac materia inter placita quæ sequuntur regem anno vicesimo quarto de dño rege & W. de S. Johanne in comitatu South. Item non multum refert, si de quantitate expletiarum fiat mutatio intentionis. Item fit mentio de tēpore pacis p aliquo tempore guerrino, sicut de tempore regis I., quia de seysina antecessoris tali tempore acquisita loqui non convenit, quia post guerram recuperaverunt illi, qui per guerram fuerint, disseysiti, talem seysinam qualem habuerunt in initio guerræ, cùm per vim & injustè essent disseysiti. Per vim & injuste dico, quia multi ab hostibus capti sunt in bello, & terram dant pro redemptione sua, & talibus non subvenitur, nisi per actionem quòd metus causa, si forte metus intervenerit. Et etiam sunt plures, qui tali tempore gratis dant sine aliqua violentia vel metu, et talis donatio non revocatur. Item non sufficit q petens intentionem suam sic proponat et fundet,

an error has put himself upon a great assise, the tenant gives something of his own to have mention of the time, or for this reason mention is made of the time, because the said ancestor in the time of such a king was not *in rerum natura*, or because he was dead beforehand, or at that time was not born.

But when through error there is sometimes made mention of an undue time, if the said claimant has made an error, he may change his declaration and revoke his error, and speak of the time of another king up to the time of the contestation of the suit, to wit, until a precise answer has been given to the declaration of the claimant, and so that the tenant has put himself on the great assise or will defend himself by battle. But beyond this by no means, when mention has been made of the time. And on this matter there is a case amongst the pleas which follow the king in the twenty-fourth year concerning the lord the king and William St. John, in the county of Southampton. Likewise it does not matter if an alteration of the declaration has been made concerning the quantity of profits. Likewise mention is made of "a time of peace" instead of "a time of war" as in the time of king John, because it is not suitable to speak of the seysine of an ancestor acquired in such a time, because those, who have been disseysed through a war, have recovered after the war such seysine as they had at the commencement of the war, since they were disseysed by force and unjustly. I say by force and unjustly, because many persons are taken captive by the enemy in war and give land for their ransom, and such persons are not aided unless by an action *quod metûs causa*, if by chance fear has intervened. And likewise there are more persons who give their land at such a time gratuitously without any violence or fear, and such a donation is not revoked. Likewise it is not sufficient that a claimant so propounds and grounds his declaration, unless he has

4.
That the
tenant may
change his
declaration
in part.

f. 373 b.

nisi sic fundatam probaverit, et dicatur in fine intentionis fundatæ: Et quòd tale sit jus suum, offert disrationare per corpus cujusdam talis liberi hominis sui, et talis nomine, qui hoc paratus est disrationare per corpus suum, sicut ille qui hoc vidit, vel de visu patris sui (ut supradictum est), cui pater suus cùm esset agens in extremis injunxit in fide, qua filius patri tenebatur, quòd si inde loqui audiret, quòd inde testis esset, et hoc per corpus suum disrationaret, sicut illud quod idem pater suus vidit et audivit. Si autem in narratione facienda aliquis articulorum prædictorum omittatur, et narratio à petente advocetur, ita quòd error revocari non possit, et petens clameum suum pro se et hæredibus suis amittet imperpetuum.

CAP. VI.

4. **Qualiter fit narratio descensus usque ad petentem per singulos gradus.** Fit etiam quandoque narratio descensus ab antecessore usque petentem per plures personas et plures gradus, et ad plures personas qui sunt quasi unus hæres, sicut ad plures filias et earum hæredes, et quo casu sic fiet¹ narratio: Et à tali antecessore descendit jus terræ illius tali ut filio et hæredi, et de tali duabus filiabus suis vel pluribus, scilicet B. primogenitæ, et C. postnatæ. Et hic fiat in narratione divisio descensus pro virili portione quæ singulas earum contingit, et ita quòd narratio descensus prosequatur lineam singularem, et dicatur sic: Et de prædicta D. descendit jus medietatis illius terræ cuidam tali, ut filio vel filiæ et hæredi. Et de prædicto tali descendit jus

¹ "fiat," MS. Rawl. C. 160.

proved it to be so grounded, and it be thus said at the end of the declaration so grounded, and that such is his right he offers to deraign by the body of a certain so-and-so his free man, and so-and-so by name, who is prepared to deraign this by his body, as one who has viewed it, or upon the view of his own father (as aforesaid), to whom his father when he was in his last moments enjoined upon the faith whereby a son is bound to his father, that if he should hear it spoken of, that he should be a witness thereof, and that he should deraign it by his body, as a thing which his said father had seen and heard. But if in making the declaration any of the aforesaid articles is omitted, and the declaration is argued by the claimant, so that the error cannot be recalled, the claimant shall lose his claim for himself, and for his heirs in perpetuity.

CHAPTER VI.

A declaration is sometimes made of the descent from the ancestor to the claimant through several persons, and several degrees, and to several persons who are as it were one heir, as for instance to several daughters and their heirs, and in which case the declaration should be made thus: "and from such an ancestor the right to that land descends to so-and-so as the son and heir, and from so-and-so to his two daughters or more, to wit, to B. the elder born and to C. the younger born." And here there should be made in the declaration a division of the descent of the particular portion which belongs to each of them, and so the declaration of the descent follows the singular line and may be stated thus: "and from the aforesaid D. the right to the mediety of that land descends to a certain so-and-so as the son or the daughter and heir; and from the aforesaid so-and-so

1.
In what way the declaration is made of the descent down to the claimant through single degrees.

illius medietatis duabus filiabus ipsius talis, scilicet D. et E., et ita quòd fiat subdiviso.¹ Sed cautè² perspicendum ne in reversione facienda ad superiores parentes in linea transversali, quòd computatio excedat tempus regis avi, et infra eodem. Et de prædicta A. descendit jus illius quartæ tali ut filio et hæredi. Et de prædicta E. tali ut filio et hæredi, et sic per divisiones in infinitum perveniri poterit de hærede in hæredem usque ad minimam partem unius unciae,³ si
 f. 374. hæreditas per uncias dividatur. Item fiat reversio ad aliam medietatem et reincipiatur narratio descensus sic: Et de prædicta C. descendit jus alterius medietatis tali ut filio et hæredi, vel tali ut filiæ et hæredi, vel ut filiabus et heredibus, et ita quòd fiat subdivisio (ut supra) de gradu in gradum, persona in personam, usq̃ ad illos qui petant, vel aliter: Et unde talis antecessor fuit seysitus, &c. ut supra. Et quia talis obiit sine hærede de se, descendit jus terræ illius tribus sororibus suis, A. B. C. vel filiis sicut de Gavelkynde, vel alibi ubi terra partibilis est ratione terræ, vel ratione plurium personarum q̃ sunt quasi unus hæres, et sic fiat divisio ut supra. Item fit narratio descensus aliquando à linea recta descendente usq̃ ad lineam transversalem ad unum gradum, vel ad plures, secundum q̃ jus descensus recipit divisionem vel non recipit. Et sicut dividitur aliquando jus successionis ad plures personas quæ succedunt, ita conjungi poterunt plura jura successionis per mortem earundem personarum, ratione quarum facta fuit divisio in unum jus, et in unicam personam hæredem per jus accrescendi, quia cohæredes et participes mortui sunt sine hærede de se.

¹ "fiat subdivisio," MS. Rawl. C. 160.

² "Sed caute" down to "eodem" omitted, MS. id.

³ Uncia, modus agri, Sc. duodecima pars jugeri, Ducange Gloss.

“ the right to that mediety descends to his two daughters, “ to wit, D. and E.,” and so that a subdivision be made. But it is to be cautiously observed lest in tracing the reversion to the ascendants in the transverse line the computation should exceed the time of the grandfather of the king, and downwards in the same manner: “ And from the aforesaid A. the right to that fourth “ share descends to so-and-so as the son and heir, “ and from the aforesaid E. to so-and-so as the son “ and heir,” and so by divisions without end one may arrive from heir to heir down to the smallest part of a single ounce, if the inheritance be divided by ounces. Likewise let a return be made to the other mediety, and let there be recommenced the declaration of the descent thus: “and from the aforesaid “ C. the right to the other mediety descends to so-and-so “ as the son and heir, or to so-and-so as the daughter and “ heiress, or to such as daughters and heiresses,” and so that a subdivision be made (as above) from degree to degree, from person to person, down to those who claim, or otherwise. “ And whereof such an ancestor was “ seysed,” &c. as above. And because so-and-so died without an heir of his own, the right in that land descended to his three sisters, A., B., and C., or to his sons as in gavelkind, or elsewhere where the land is partible by reason of the land or by reason of several persons who are as it were one heir, and so let a division be made as above. Likewise a declaration is made of the descent sometimes from a right line descending down to a transverse line for one degree or for more, according as the right of descent receives a division or not. And like as the right of succession is sometimes divided amongst several persons who succeed, so through the death of the said persons in regard of whom the division has been made many rights of succession may be conjoined into one right, and in a single personal heir through the right of accretion, because coheirs and parceners have died without an heir of themselves.

f. 374.

2.
Si fieri
debeat
narratio a
linea recta
usque ad
transver-
salem.

Cùm vero fieri debeat narratio descensus à linea recta usq̃ ad lineam transversalē, tunc dicatur, & à tali antecessore descendit jus terræ illius tali ut filio et hæredi et de tali tali ut filio et hæredi, et quia idem talis obiit sine hærede de se, revertebatur jus iræ illi² tali ut avunculo vel amitæ vel materteræ et hæredi, vel pavunculo vel pamtæ vel pmaterteræ ut hæredi, vel pluribus amitis vel materteris vel proamitis vel promaterteris. Et de talibus facta divisione juris usque ad suos hæredes et hæredes hæredum per divisiones, &c. ut supra, vel sine. Et quò casu, si unus ex pluribus participibus petat per se solus sine aliis, et objiciatur ei quòd participes habeat qui veniunt ex eodem stipite, & petens dicat quòd nihil possunt tales clamare per descensum illum, summoncantur nihilominus ad ostendendū quid juris clamant in terra petita: ut de termino Sancti Hilarii anno regni regis Henrici decimoquinto in comitatu Buckingham de Walter de Bosco. Et illud generaliter observatur ubique, ubi præsumi poterit quòd quis jus habeat in re petita, qui non nominatur. Et quòd talis summoniri debeat, habetis de termino Sancti Hilarii anno regni regis Henrici nono in comitatu Berks. de Reginaldo Morin.

3.
Si antena-
tus in vita
patris
communis
moriatur.

Si autem in vita patris moriatur, dicunt quidam quòd nulla de eo fieri debet mentio ac si nunquàm esset in rerum natura (secundum quosdam), quòd non est verum, quia nulli hæredi descendit jus aliquod ab antecessore, nisi per mortem antecessoris. Sed sunt quidam qui dicunt (& verum est) quòd de filio mortuo in vita patris oportet facere mentionem secundum

Britton, vi.
ch. ii. § 4.

Wilhelmum de Eborum, & unde dicere oportet quòd

But when there ought to be made a declaration of a 2.
 descent from the right line to a transverse line, then let If a declar-
 ation
 it be said "and from such an ancestor the right in that ought to be
 made from
 a right
 " land has descended to so-and-so as the son and heir, line to a
 transverse
 line.
 " and from such person to so-and-so as the son and heir,
 " and because the said so-and-so died without any heir
 " of his body, the right in that land reverted to so-and-
 " so as the uncle or aunt by the father's side or aunt by
 " the mother's side and heir, or to several aunts by the
 " father's or the mother's side, or to several grand-aunts
 " by the father's or the mother's side. And from such
 " persons on a division having been made, to their right
 " heirs and the heirs of such heirs through divisions, &c.
 " as above, or without them." And in which case, if
 one out of several parceners claims by himself alone
 without the others, and it be objected to them that he
 has coparceners who come from the same stock, and the
 claimant says that they cannot claim anything through
 that descent, nevertheless let them be summoned to
 show what right they claim in the land so claimed, as in
 St. Hilary's term in the fifteenth year of the reign of
 king Henry [in the county of Buckingham, concerning
 Walter de Bosco. And that is generally observed every-
 where, when it can be presumed, that a person who is
 not named has a right in the thing claimed. And that
 such a person ought to be summoned you have a prece-
 dent in St. Hilary's term in the ninth year of the reign
 of king Henry in the county of Berks, concerning Regi-
 nald Morin.

But if he dies in the lifetime of the father, some say 3.
 that no mention ought to be made of him, as if he had If the
 elder-born
 dies in the
 life of the
 common
 father.
 never been *in rerum natura* (according to some), which
 is not true, for to no heir does any right descend from an
 ancestor, except through the death of an ancestor. But
 there are some who say (and it is true) that concerning
 a son who has died in the lifetime of the father mention
 ought to be made according to William of York, and

de tali antecessore descendit jus vel descendere debuit tali nepoti vel nepti vel fratri tali si hæredes de corpore defecerint. Et unde cùm filius moriatur in vita patris relicto filio hærede vel filia, cùm sint in potestate avi, statim descendit eis jus. Et unde si fiat narratio descensus, oportet quòd fiat mentio de gradu vacuo per mortem filii, ne fiat saltus gradu prætermisso, & dicatur sic: Et unde talis antecessor fuit
 f. 374 b. seysitus &c., et de tali antecessore descendere debuit jus tali, ut filio & hæredi, & de tali ei qui nunc petit ut nepoti vel nepti & hæredi, quasi aliter esset, et ille qui in vita patris moreretur feloniam faceret, eo in descensu non computato, sic posset hæreditas et jus possessionis et successionis immediate descēdere nepotib⁹ vel neptibus ab avo, non obstāte feloniam patris, q̄ esset incōveniēns. Sed cùm primogenitus moriatur in vita patris nullo hīde de corpore suo relicto, sed fratribus, nō oportet de fratre antenato, qui in vita patris mortuus est, facere mētionē in narrationē descensus, licet jus ei descēdere deberet, tum quia fratres superstites sunt adeo ppinqui hæredes in gradu quoad seysinā, sicut ille fuit qui mortuus est, tum etiā quia primogenitus corū qui superstites sunt statim post mortē fratris pmortui incipit esse loco ipsius hæres ppinquior patri cōmuni: & unde quāvis primogenitus præmortuus feloniam faceret, hoc non nocet fratribus superstitibus cū non essent ipsius hæredes dum pater viveret, nec ejus hæredes esse

whence it ought to be stated that from such an ancestor the right descended or ought to have descended to such a grandson or grand-daughter or such a brother, if heirs of his body have failed. And whence when a son dies in the lifetime of his father leaving a son and heir or a daughter, since they are under the authority of the grandfather, the right descends forthwith to them. And hence if a declaration is made of the descent, it is incumbent that mention should be made of the degree which is vacant through the death of the son, lest there should be a jump through a degree having been omitted, and let it be stated thus: and whereby such an ancestor was seysed &c., and from such ancestor the right ought to have descended to so-and-so as the son and heir, and from so-and-so to the person who now claims as the grandson or the grand-daughter and heir, as if it were otherwise, and he who should die in the lifetime of the father should have committed felony, if he is not computed in the descent, the inheritance and the right of possession might immediately descend to the grandsons or the grand-daughters from the grandfather, notwithstanding the felony of the father, which would be inconvenient. But when the first-born dies in the life of the father without leaving any heir of his own body, but leaving brothers, it is not incumbent to make mention in the declaration of descent concerning the elder-born brother, who has died in the life time of the father, although the right ought to have descended to him, as well because his surviving brothers are as near heirs in degree as regards the seysine as he was who is dead, as well also because the eldest born of those who survive immediately after the death of his predeceased brother begins to be in his place the nearest heir to the common father, and hence although the predeceased first-born son has committed felony this does not hurt his surviving brothers, since they were not his heirs, whilst the father was alive, nor can they be his

f. 374 b.

heirs since he ceased to exist during the life of their common father, and before any right descended to him. But in truth such a person forfeits whatever he had at the time of the felony, if he was convicted of the felony, and whatever could fall to him and to his heirs then existing or future, and to all who could be heirs to him, but acquisitions of his own, if the dead brother had any, he forfeits for his heirs coming from his own body and even for his brothers and more remote heirs. Mention may also be made in the declaration of descent concerning the seysine of an ancestor in the time of one king and from the time of what king, and the declaration may be continued to the time of another king, and mention may be made of him, and just as a declaration of descent is made from the seysine of an ancestor from the great-grandfather down to the great grandson, so it may be made conversely from the great-grandson and from his seysine up to the uncle and aunt and further in the ascent, and to their next heirs in descent to infinity. And in what way and to whom the descent ought to be made in a right descending line, or in a transverse ascending line, since the right cannot reascend by a straight line, by which it has descended, may be seen below concerning successions, provided however if from failure of heirs descending in a right line the declaration of descent ought to be made in reverting to the transverse line to someone who has been dead a long time back, let it be inquired, in the time of what king, as if he died in the time of king Henry the grandfather or since that time the descent shall hold good, because a person may prove his right and descent from such a time. But if he died at any time before the time of that king, the action will be unavailing on account of the failure of proof.

If an abbot or prior or other collegiate men claim land or an advowson or anything of a like kind in the name of their church, upon the seysine of their predecessors by saying "and whereof such an abbot his predecessor was ^{4.} If an abbot or a prior claim by a writ of right. seysed as in his own domain &c." The declaration

f. 375.

de priore in priorem, nec de abbatibus vel prioribus mediis fiat mentio, quia in collegiis & capitulis semper idē corpus manet, quamvis successive omnes moriantur, & alii loco ipsorū substituantur, sicut dici poterit de gregibus ovium, ubi semp idē grex, quāvis omnes oves sive capita successivè decedāt, nec succedit aliquis eorū alteri jure successionis, ita q jus descendat hæreditariè ab uno usq̃ ad aliū, quia semp jus ptinet ad ecclesiā, & cū ecclesia remanet: secundum q videri poterit in chartis religiosorum de feoffamēto, ubi manifestē videri poterit, q donatio est facta primò et principaliter Deo et ecclesiæ tali, & secūdariò monachis vel canonicis ibidem Deo servientibus. Et ideo si abbas vel prior, monachi vel canonici successive obierint, domus in eternū permanebit. Et unde cū abbas vel prior vel alii viri collegiati petierint terram vel advocacionem versus aliquem per breve de recto, pposita intentione et fundata (secundum q supradictum est) & nomine ecclesiæ, fiat sic irrotulatio: Talis abbas vel prior, vel alius petit versus talem tantam terram cum pertinentiis &c. ut supra. Vel talem advocacionem, scilicet advocacionem talis ecclesiæ cum pertinentiis ut jus ecclesiæ suæ. Et unde talis abbas vel prior vel alius pdecessor suus fuit seysitus in dominico suo ut de feodo et jure tempore pacis, &c. ut supra. Et ita quòd presentavit ad eandem ecclesiam talem clericum nomine R. & qui ad præsentationem suam fuit admissus ad eandem ecclesiam, & inde recepit expletia ad valentiam quinque solidorum & plus, sicut in decimis, oblationibus, & aliis obventionibus. Et quòd tale sit jus suum & ecclesiæ suæ offert &c. Et ita q nulla

should not be from abbot to abbot, or from prior to prior, nor should there be mention of the intermediate abbots or priors, because in colleges and in chapters the same corporation always remains, although they all die successively and others are substituted in their place, as may be said of flocks of sheep, where there is always the same flock, although all the sheep or heads successively depart, nor does any individual of them succeed to another by right of succession, in such a manner that the right descends by inheritance from one to another, because the right always pertains to the church, and remains with the church, according to what may be seen in the charters of feoffment of religious orders, where it may be manifestly seen, that a donation is made in the first place and principally to God and such a church, and in the second place to the monks or the canons therein serving God. And accordingly if the abbot or the prior, the monks or the canons successively die, the house remains to eternity. And hence when the abbot or the prior or the other collegiate men claim land or an advowson against any one by a writ of right, the declaration having been propounded and grounded (according to what has been said above) and in the name of the church, let the enrolment be made in this manner: "Such an abbot or prior or
 " other person claims against so-and-so so much land
 " with its appurtenances" &c., as above. Or "such an
 " advowson, to wit, the advowson of such a church with
 " its appurtenances, as the right of his church. And
 " whereof such an abbot or prior or other his predecessor was seysed in his domain as of fee and of right in
 " time of peace" &c., as above. "And in such a manner
 " that he presented to the said church such a clerk by
 " name R., and who upon his presentation was admitted
 " to the said church, and received profits therefrom up
 " to the value of five shillings and more, as in tithes,
 " oblations or other obventions." And that such is his right and the right of his church he offers &c. And in

f. 375.

Q 6366.

F F

fiat mentio de aliquo descensu, nec de abbatibus nec de prioribus mediis, cum non sint hæredes nec aliquod jus descendat psonis ipsorum, sicut esset si jus hæreditariè descenderet ad hæredes. Item erit observandum in personatibus, vel præbendis, si persona vel canonicus placitaverit per breve de recto, & tunc dicatur, peto tantū terræ cum pertinentiis &c., ut supra, ut jus ecclesiæ meæ, vel ut jus præbendæ meæ, & unde talis persona vel canonicus (prædecessor meus) fuit seysitus in dominico &c. ut de jure ecclesiæ, vel p̄bendæ suæ &c. ut supra. Et de hac materia inveniri poterit de term̄ Paschæ, anno regni regis Henrici decimo quarto in com̄ Hun̄, de W. archdiacano Wellēs.

5. Si vero petat quis seysinā antecessoris sui p bre de recto, ubi terra vel aliud datū fuerit pluribus simul, sicut pluribus legitimis vel bastardis, p̄cipibus, hæredibus, vel extraneis. Itē coiunctim sicut in maritagiū viro et uxori vel alio modo, in narratione descēsus, de omnibus oportebit facere mētionē ita. Et unde A. B. C. D. fuerūt seysiti in dominico suo &c. ut supra. Et ita, q tales mortui fuerūt sine hærede de se, accreverūt corū ptes supstitibus, et ita q jus fræ illius descēdit hæredibus eorum, qui fuerūt supstites, scilicet tales. Et quia unus illorū, scilicet talis, obiit sine hærede de se, descēdit totū jus fræ illius tali, et de tali illi qui nūc petit, et q tale sit jus suū offert, &c. Si autē petatur de seysina viri & uxoris, quibus data est fra in maritagiū, vel alio modo, tūc dicatur sic: Et unde A. & B. uxor ejus fuerūt seysiti in

Si plures
sint peten-
tes, omnes
nominen-
tur in brevi,
sive legiti-
mi, sive
bastardi,
sive servi.

such manner that there be no mention of any descent nor of intermediate abbots or priors, since they are not heirs, nor does any right descend from their persons, as would be the case if the right descended by inheritance to heirs. For it will have to be observed in parsonships or prebends, if the parson or the canon has sued by a writ of right, and it be then said, "I claim so much land" with its appurtenances &c. as above, as the right of "my church, or as the right of my prebend, and whereof" such a parson or canon (my predecessor) was seysed "in domain &c. as by right of his church or of his prebend" &c. as above. And on this matter a case will be found in Easter term in the fourteenth year of the reign of king Henry in the county of Hunts, concerning William, archdeacon of Wells.

But if any one claims the seysine of his ancestor by a writ of right, where the land or other estate was given to several persons together, as to several legitimate or bastard persons, parceners, heirs or strangers in blood. Likewise conjointly, as for a marriage portion to a man and his wife, or in some other manner, in the declaration of the descent it is incumbent to make mention of all in this manner: "And whereof A., B., C. and D. have been" seysed in their domain &c." as above. And so, because such persons have died without heirs of their bodies, their shares have accrued to the survivors, and so that the right in that land has descended to the heirs of those who were survivors, to wit, so-and-so. And because one of them, to wit, so-and-so, has died without an heir from his body, the whole right in such land has descended to so-and-so, and from so-and-so to him who now claims, and that such is his right he offers &c. But if it be claimed from the seysine of a man and his wife, to whom the land has been given as a marriage portion or in some other manner, then let it be said thus: And whereof A. and B. his wife were seysed in their domain as of fee

5. If there be several claimants let them all be named in the writ, whether legitimate, or bastards, or serfs.

dominico suo ut de feodo & jure, & ut de maritagio ipsius B. tēpore talis regis, & tempore pacis &c. ut supra. Et de p̄dictis A. & B. descendit jus terræ illius tali, ut filio & hæredi &c. ut supra. Et de hac materia inveniri poterit in rotulo de termino S. T. anno regis H. iv. in comitatu Wilf, de W. de Lusteshille & Wilhelmo de Conelesfend.

6. Et nisi de omnibus fiat mētio cadit actio. Item si
 Qualiter et quibus modis cadit actio per defaultam vel errorem in narratione. f. 375 b. ab eo incipiatur narratio qui nunqm fuit in seysina, similiter cadit actio, & petens amittit si hoc fuerit recognitum: ut de terñ S. T. añ regis H. tertio circa finē rotuli. Itē eodē modo, si erratum fuerit in persona ejus de cujus seysina petitur, ut si quis petat de seysina matris ubi petere deberet de seysina patris, vel è conversò, et idem erit si erratum sit in nominibus p̄priis, ut si antecessor vocetur uno nomine & nominandus esset alio, et idē dici poterit de omnibus aliis nominandis in descēsu. Itē idē erit si aliquis omitatur qui nominari deberet, vel si aliquis gradus p̄termittatur. Itē idē erit si erratū fuerit in re petita, ut si una res petatur p̄ alia. Item si quis omiserit aliquem in narratione descensus, qui plus juris habuerit, vel tantundē quantum habet ille qui petit. Et de hac materia inveniri poterit de terñ S. Hilarii et de terñ P. anno regis H. quinto circa finē rotuli. Item si petatur de seysina alicujus per descensum qui villanus fuit, et si excipiatur ipsum esse liberum, p̄cedit magna assisa inter petētem et tenentem per verba inferius exprimenda.

7. Et sciendum q̄ liberis hominibus hæredibus à recta
 Quibus jus descendere potest. linea descendantibus, tam masculis quàm fæminis, p̄sentibus et absentibus, tam illis qui plenæ ætatis

and of right, and as of the marriage portion of the said B. in the time of such a king and in the time of peace &c. as above. And on this matter a case will be found on the roll of the term of Holy Trinity in the fourth year of king Henry in the county of Wilts, concerning William de Lusteshille and William de Conelesfend.

And unless mention be made of all, the action falls. 6. Likewise if the counting begins from him, who was never in seysine, in like manner the action falls, and the claimant loses, if this has been recognised, as in the term of Holy Trinity in the third year of the king about the end of the roll. Likewise in the same manner if an error has been made in the person of him, from whose seysine the claim is made, as if any one claims from the seysine of his mother instead of the seysine of his father, or conversely; and the same will result, if there has been an error in the proper names, as if the ancestor was called by one name, and he would have to be named by another name, and the same may be said of all the others to be named in the descent. Likewise the same will result if any one be omitted, who ought to be named, or if any grade be passed over. Likewise the same will result if there has been an error in the thing claimed, as if one thing be claimed instead of another. Likewise if one has omitted any one in the counting of the descent, who had more right, or as much right as he, who claims, has. And on this matter will be found a case in the term of St. Hilary and in Easter term in the fifth year of king Henry about the end of the roll. Likewise if the claim be made by descent from the seysine of any one who was a villein, and if it be excepted that he was a free man, a great assise proceeds between the claimant and the tenant by words to be expressed below.

And it is to be known that to free men heirs descending by the right line, male as well as female, present and absent; as well to those who are of full

6. In what manner and in what ways an action falls through default or error in the counting. f. 375 b.

7. To whom right may descend.

sunt quàm illis qui sunt infra ætatem. Item tam ideotis quàm discretis. Itē tam mente captis quàm illis qui sunt sanæ mentis, q̄ quidē dici posset de furiosis, sive gaudeant dilucidis intervallis sive nō, et hoc, quia descēsus juris non requirit consensum hære-
dis, sed consensum requirit aditio hæreditatis juris descensus, quia absenti & ignoranti descēdit jus, sed seysina sine cōsensu non acquiritur: tales enim, cū animū nō habuerint acquirēdi in tali statu, acquirere nō possūt seysinā, si furor sit perpetuus, sed si nō perpetuus, tūc poterūt retinere sicut quilibet minor, tutore tamē autore vel per se. Et cū semel possidere inceperint furiosi et mēte capti, nūqm̄ in tali statu desinē possūt possidere durante furore, nō magis qm̄ minor infra ætatē. Sed hoc facere non possūt stulti et ideotæ, quia habēt cōsensum et dissensum, qđ quidē nō habēt supradicti. Sed de surdo et muto naturaliter, si oīno audire nō possūt nec loqui, si autē tarde, illud idē dici poterit, q̄ acquirere poterūt et retinere et ad alios trāsferre, quia ad minus cōsētire poterit p̄ signa et p̄ nut^o. Sed naturalit̄ surd^o et mutus p̄ se nec p̄ pcuratores acquirere possūt seysinā, nec dare possūt, nec sibi aliquid stipulari, quia mutus verba p̄ferre nō potest stipulationis, nec surdus verba stipulātis audir̄, sed p̄ alios sicut tutores vel curatoř, quia animo alieno et corpore. In fine notādū, q̄ nulli poterit jus descē-
dere, cujus pater vel mater vel alius antecessor, p̄ qm̄ fieri debeat descensus, vivus fuit et sanus, bonæ memoriæ vel nō, quāvis antecessor suus se dimiserit et hæreditatē hæredi suo dimiserit. Ex hoc autē non

age as to those who are under age. Likewise to idiots as well as to discerning persons. Likewise as well to persons of unsound mind as to persons of sound mind, which may be said of madmen, whether they enjoy lucid intervals or not, and this, because the descent of a right does not require the consent of an heir, but the acceptance of an inheritance of a right by descent requires consent, because a right descends to a person who is absent and ignorant of it, but the seysine is not acquired without consent: for such persons when they have not had the intention to acquire, cannot in such a state acquire the seysine, if the madness be perpetual, but if it be not perpetual, then they may retain like any minor, his tutor giving authority, or by himself. And when once madmen and persons of unsound mind have begun to possess, they can never in such a state cease to possess during their madness, not more than a minor whilst he is under age. But fools and idiots cannot do this, because they have consent and dissent, which the aforesaid have not. But concerning a person deaf or dumb by birth, if they cannot at all hear or speak, but if slowly, the same thing may be said, that they can acquire and retain and transfer to others, because they can at least consent by signs and by nods. But a person who is by birth deaf and dumb cannot acquire seysine by himself nor by his agents, nor can he give it, nor can he stipulate anything for himself, because a dumb person cannot utter the words of a stipulation, nor can a deaf person hear the words of a stipulator, but he may do it through others as through tutors or curators, because it is done through the mind and body of another person. Finally it is to be noted, that a right cannot descend to any one, whose father or mother or other ancestor, through whom the descent ought to be made, is alive and sound, of good memory or not, although his ancestor has discharged himself and has dismissed the inheritance to his heir. But thereby the heir shall not have an action for the

habebit hæres actionē hæreditariā, q̄ jus possit ei descendere in vita antecessoris, licet antecessor in seculo remāserit, vel habitū religionis assūpserit, ut de term̄ S. H. añ regis H. vii. Itē poterit jus descendere feloni post felonē sicut ante, & cum eo remanebit & ad hæredes descendet jus, donec cōvincant¹ de feloniam. Sed quo cōvicto nūqm̄ descendet ad hæredes, sed reascēdet ad capitales dños à quibus primò p̄cessit, et sēper sequetur seysina jus merū, & erit tenemētū eschaeta dominoꝝ.

8.
f. 376.
Quod donatorio nihil juris descendere potest de seysina donatoris vel antecessoris.

Eodē modo, si donatio facta fuerit ab aliquo antecessore qui nōiāt in descēsu, nūqm̄ fiet descēsus ad hæredem donatorii de seysina illius antecessoris donatoris: ut si dicatur, Et unde talis antecessor fuit seysitus &c. et de tali descendit jus terræ illius tali ut filio & hæredi, qui terrā illam dedit tali antecessori petentis. Et unde jus terræ illius descendit ad illum qui nunc petit, ut filio et hæredi, et sic impedit donatio descensum ad petente, per q̄ denegabitur ei actio hæreditaria ex tali descensu. Poterit enim donare quis id q̄ habet, scilicet seysinam & jus, actionē vero hæreditariā cedere nō poterit alicui, ubi necesse erit petere p̄ descensum. Itē nec p̄sentationē. Et de hac materia inveniri possit de term̄ S. Hilarii añ regis H. vii. in cōm̄ Can̄, de Alano de Bassingborne et Roberto de Insula de advocatione ecclesiæ de Wypol, & unde idē Alanus petiit advocationem illam de seysina antecessorū p̄dicti Roberti donatoris. Item descendat jus alicui per modum donationis, exclusis penitus à successionē veris primis & p̄ximis hæredibus donatoris, ut

¹ "convincantur" seems to be required by the context.

inheritance, for the right may descend to him in the life of his ancestor, although his ancestor may have remained in this world, or have assumed the habit of a religious order, as in the term of Saint Hilary in the seventh year of king Henry. Likewise the right may descend to a felon after his felony as before, and shall remain with him, and the right may descend to his heirs, until he is convicted of felony. But upon his conviction it shall never descend to his heirs, but shall reascend to the chief lords from whom it first proceeded, and the seysine shall always follow the absolute right, and the tenement shall be an escheat of the lords.

In the same manner, if a donation has been made by some ancestor, who is named in the descent, there shall never be a descent to the heir of the donatory from the seysine of that ancestor of the donor, as if it be said: and whence the said ancestor was seised &c., and from so-and-so the right to that land has descended to so-and-so as his son and heir, who gave that land to so-and-so an ancestor of the claimant. And from whom the right to that land has descended to him, who now claims it, as his son and heir, and so the donation impedes the descent to the claimant, wherefore an action of inheritance from such a descent shall be denied to him. For a person may give that which he has, to wit, the seysine and the right, but he cannot cede an action for the inheritance to another, where it shall be necessary to claim by descent. Likewise neither a presentation. And on this matter there will be found a case in the term of St. Hilary in the seventh year of king Henry, in the county of Kent, concerning Alan de Basingbourne and Robert de Insula, respecting the advowson of the church of Wynpol, and wherein the said Alan claimed that advowson from the seysine of the ancestors of the aforesaid Robert the donor. Likewise a right may descend to any one by means of a donation to the exclusion altogether of the true, first, and next heirs of

8.
f. 376.
That no
right can
descend to
the dona-
tory from
the seysine
of the
donor or
his ances-
tor.

supra de advocationibus, sed non per descēsum sed per modum donationis.

CAP. VII.

1. *Proposita intentione actoris, videat tenens an sit jurisdictione et justiciarius qui judicare possit. Item an sit ibi actor, et de cautela circa responsionem tenentis considerandum, et de visu petendo.*

Proposita sic intentione petētis & fundata (ut p̄dictum est) à petente, imprimis videat tenens an sit ibi judiciū, scilicet justiciarii qui judicare possunt, & jurisdictionē habent ordinariam vel delegatā, quia ex hoc aliquando poterit cōpetere ei exceptio jurisdictionis perēptoria. Postea vero an sit actor ibi, petēs scilicet an querens, et tūc si actionē habeat, & si actionē habeat, tunc statim p̄cedere possit, vel ad tēpus remanere debeat in suspenso. Ex hoc enim cōpetere poterit tenenti exceptio dilatoria, vel peremptoria, secūndum q̄ exceptio p̄posita fuit cōtra ipsam actionē vel contra p̄sonam agentis. Si autē nihil sit q̄ excipi poterit cōtra p̄dicta, tunc videndū an libellus conventionabilis, breve scilicet sit cōveniēns actioni et in nulla sui parte vitiosum, cūm ex hoc dari possit tenenti exceptio. Quæ quidē si per omnia cōveniānt, tunc demūm videndū an tenens totam rem teneant q̄ petitur, cūm certa res debeat in juditium deduci, vel si ejus ptem, tunc quotā, vel si omninō nihil, & similiter si res petita pertineat ad jurisdictionē judicantis, & ideo petitur visus rei petite, quia ex hoc cōpetere poterit exceptio tenenti ne sit actio inanis cū tenēte, cūm rem restituere non possit vel totā, secūndū q̄ petitur.

the donor, as above concerning advowsons, but not by descent, but by way of the donation.

CHAPTER VII.

Upon the declaration of the claimant having been thus propounded, and having been supported (as aforesaid) by the claimant, let the tenant first see whether there be there a judgment, to wit, of justiciaries who can judge, and who has ordinary or delegated jurisdiction, for sometimes on this ground he may be entitled to a peremptory exception against the jurisdiction. Afterwards whether the party proceeding be there, the claimant, to wit, or the complainant, and then if he has a right of action, and if he has a right of action, then he may proceed forthwith, or it ought to remain in suspense for a time. For on this ground the tenant may be entitled to a dilatory or a peremptory exception, according as the exception should be taken against the action itself or against the person of the party proceeding. But if there be nothing which can be objected against the aforesaid, then it is to be seen whether the libel be conventional, the writ forsooth suitable to the action and in no part defective, since on this ground the tenant may take an exception. Which things indeed if they are in all respects suitable, then at length it is to be seen whether the tenant holds the entire estate which is claimed, since a thing certain ought to be brought into court, or if a part of it, then how much, and if none at all, and in like manner if the estate claimed appertains to the jurisdiction of the judge, and accordingly a view is claimed of the estate claimed, because on this ground the tenant may be entitled to an exception, lest the action should be fruitless with the tenant, when he cannot restore the estate, or not the entire estate, according to what is claimed. And when all these things thus concur, then let the tenant answer

1.
Upon the declaration of the claimant having been propounded, let the tenant see if there be jurisdiction and a justiciary who can judge. Likewise it is to be considered whether the claimant be there, and concerning the caution about the answer of the tenant, and concerning the claiming a view.

Et cūm hæc omnia sic cōcurrant, tunc respondeat tenens de principali per se vel per attornatum, nisi warrantū habuerit qm̄ vocare voluerit, qui cūm warrantizaverit ut infra dicetur plures cōpetunt ei exceptiones, q̄ principali tenenti non cōpetunt. Et vice versa plures cōpetunt tenenti principali, q̄ nō cōpetunt warranto, si ordinate pponant & rite, quas quidē si tenēs principalis omiserit in initio litis anteqm warrantū vocaverit, p warranti vocationē tam p se quā p warranto suo ille videbitur tacitē renunciasse, sicut sunt ōnes fere exceptiones pvenientes ex pparatoriis iuditiōrū.

CAP. VIII.

f. 376 h.
1.
De visu
petendo, et
quare
faciendus
est visus.

Cum autē onerosum esset de singulis exceptionibus tractare suo loco & per se, utilius & facilius erit (ut videtur) omnes quasi in unum fasciculum colligere, & de omnibus simul tractare per ordinē. Ideo omisso hic tractatu de exceptionibus, tractetur de visu petendo, ut certa res in iudicium deducatur, scilicet ut petens ostendat & tenētem certum reddat de qua re ipsum velit convenire. Fit autē visus aliquando parti, aliquando juratori, sicut in assisis in causa possessionis, & aliquando in inquisitionibus de rebus, de quibus habetur cōtentio inter partes, & de loco, etiam de facto sicut in transgressionibus, nec refert utrum quis pti adversæ visum faciat de re petita, vel q tantundē valeat, & ita q res per metas certas & p designationē locorū & nominū, q res certa designetur. Sed re vera si rectus ordo pponēdi exceptiones servetur, primò

concerning the principal question either by himself or by his attorney, unless he have a warrantor whom he would wish to call, who when he shall have warranted as shall be explained below, he is entitled to several exceptions, to which the principal tenant is not entitled. And conversely the principal tenant is entitled to several, to which the warrantor is not entitled, if they be propounded in due order and manner, which indeed if the principal tenant has omitted at the commencement of the suit, before he has called a warrantor, by the calling a warrantor he will seem to have tacitly renounced them as well on his own behalf as on behalf of the warrantor, such as are almost all the exceptions arising from the preparatory proceedings in court.

CHAPTER VIII.

But since it would be irksome to treat of the several exceptions in their own place and by themselves, it will be more useful and more easy (as it seems) to collect all as it were into one bundle, and to treat of them all together in order. Accordingly having omitted here the treatment of exceptions, let us treat of making a view, that a thing certain may be brought into judgment, to wit, that the claimant may show and may render the tenant certain concerning what thing he wishes to convene him. But the view is sometimes made by the party, sometimes by the juror, as in assises in a cause of possession, and sometimes in inquisitions concerning which there is a contention between the parties, and concerning the place, likewise concerning the fact as in trespasses, nor does it matter whether a person affords to the adverse party a view of the estate claimed, or what is equivalent to it, and so that the estate shall be described by certain metes and by a description of the places and names as an estate certain. But indeed if a just order of propounding ex-

f. 376 b.

1.
Concern-
ing the
making of
a view,
and where-
fore a
view is to
be made.

oportet pponere illas q̄ cōpetunt super jurisdictione iudicis, & postea cōfirmare psonas partiū, & alias q̄ dilatoriæ sunt, sicut de sūmōnitione & vocatione ad iudiciū, & hujusmodi, & tunc sup editione¹ facienda, et tunc demū ut res certa in iuditium deducatur, & de visu faciendo.

2.
De visu
faciendo,
et cui non
visus,
scilicet vel
quod tan-
tundem
valeat.

Videamus inprimis cui faciendus sit visus, & cui denegetur, & ubi nō jacet visus. Et sciendum q̄ viso eo ubi non jacet, & cui denegetur, per cōsequens videri poterit cui cōpetat visus. Denegabitur quidē tenēti visus in placito de pparte sororum, quāvis in brevi nominentur maneria cum ptinentiis, quia soror petens versus sororē nescit designare nec specificare potest per quas ei accidere debeat in pparte, et ppter ea nihil aliud petet nisi rationabilē ptem suam quæ eam cōtingit de tota terra qm sorores participes tenent de hæreditate communi, de qua pater vel alius antecessor cōmunis obiit seysitus ut de feodo, & quamvis objici potest (ut videtur) quòd alii tenent partem de hæreditate de qua ille qui tenens est nihil habet in dominico nec in servitio, & est ratio quòd visus non jaceat in hac parte, quia si plures petant, nulla scire potest per se quæ pars ei accidere debeat ad partem suam. Et ad hoc facit quod habetis inter prima placita post guerram in comitatu Buckingham, de Wilhelmo de Abruncis & Matilda uxore ejus. Contrarium tamen videtur, & quòd visus jaceat, de termino S. Michaelis anno regni regis Henrici secundo post guerram in comitatu Essex, de Matilda de Say & Wilhelmo de Maundevill, quod

¹ *editio*, Declaratio, qua actor de sumptibus et litis *expensis* solvendis sese obligat. Ducange, Gloss.

ceptions be observed, it is incumbent to propound those in the first place which may be advanced upon the jurisdiction of the judge, and afterwards to confirm the persons of the parties, and others which are dilatory, as concerning the summons and the calling into judgment, and such like, and then upon making a declaration as to costs, and then at length that an estate certain be brought into judgment, and concerning the making a view.

Let us see in the first place to whom a view is to be granted, and to whom it is to be denied, and where a view does not lie. And it is to be known that upon its having been seen where it does not lie, and to whom it should be denied, it may be consequently seen who is entitled to a view. A view shall be denied to a tenant in a suit for partition amongst sisters, although there be named in the writ the manors with their appurtenances, because a sister claiming against a sister knows not how to describe, nor can she specify by what parts her allotment ought to be made in the partition, and besides she claims nothing else than her reasonable share which belongs to her of the entire estate which the sisters hold as coparceners in the common inheritance, of which their father, or other ancestor died seysed as of fee, and although it may be objected (as it seems) that other persons hold a part of the inheritance, of which he who is tenant holds nothing in domain nor in service, and the reason why a view does not lie in this part is because, if there are several claimants, no one can know by herself which part should fall to her share. And this is borne out by a case which you have amongst the first pleas after the war in the county of Buckingham, concerning William de Abruncis and Matilda his wife. The contrary however appears, and that a view lies, from a case in the term of St. Michael in the second year after the war of the reign of king Henry, in the county of Essex, concerning Matilda de Say and

2.
Of making
a view, and
to whom it
is not to be
granted, to
wit or an
equivalent.

quidem sic solvitur (ut videtur) quia primum breve loquitur de pro parte sororum ubi antecessor nup obiit, & unde sufficit p visu hoc q dicitur de tāta fra unde talis qui nup obiit obiit seysitus. In secūdo vero casu, tertia pars hæreditatis petita fuit per aliud breve de recto quā p breve nuper obiit, ubi certa pars nō distringitur, & ideo visus denegandus, quia nescit quæ pars ei accidere debeat certa de recto, & si visum petat de toto, adhuc valere non debet, quia habet q tantundem valet, s. de hæreditate unde talis fuit seysitus qui nuper obiit, & hæc vera sunt, sive cohæredes vel participes petant versus participem sive quamvis extraneā psonā. Et quāvis petatur terra per breve de recto ut de pparte, non erit visus denegandus, cū non habeat tenens forte id quod petitur, nec pro visu, quod tantundem valet. Item denegatur visus in placito dotis de terra & tenemento de quibus vir mulieris obiit nuper seysitus, quia habet tenens quod tantundem valet ut infra de eodem. Si autem manerium aliquod petatur sine pertinentiis, visus denegabitur, quia aut tenens statim confiteatur quod illud teneat vel quod non teneat, & secundum hoc respōdeat vel quietus recedat, quia manerium satis designatur ex nomine, si autem dubitetur, fiat inquisitio sub pœna loci petiti. Si autem petatur medietas manerii quod non sit divisum nec ptitum etiam sine pertinentiis, denegabitur visus, quia ignorare poterit quæ medietas pertinet ad tenentem. Si autem manerium partitum sit & petatur medietas sine pertinentiis, eodem modo denegabitur visus, si autem cū pertinentiis, aliud

f. 377.

William de Maundevill, which is thus explained (as it seems), because the first writ speaks of a partition between sisters where the ancestor has lately died, and it suffices instead of a view that it is said of so much land of which so-and-so, who lately died, died seysed. But in the second case the third part of the inheritance was claimed by another writ of right than a writ of *Nuper obiit*, where a certain part is not distrained, and therefore a view is to be denied, because he knows not what certain part ought to fall to him of right, and if he claims a view of the whole, still it ought not to avail, because he has what is equivalent, to wit, of the inheritance of which so-and-so was seysed who lately died, and these things are true, whether coheirs or coparceners claim against a coparcener or any extraneous person. And although the land be claimed by a writ of right, as in a suit for partition, a view will not have to be denied, when the tenant by chance has not that which is claimed nor instead of a view what is equivalent. Likewise a view was denied in a plea of dower from land and a tenement, of which the husband of the woman died lately seysed, because the tenant has what is equivalent, as below on the same subject. But if a manor be claimed without the appurtenances, a view shall be denied, because let the tenant confess either that he holds it or does not hold it, and according thereto let him make answer or go away acquitted, because the manor is sufficiently designated by its name, but if it be doubted, let an inquest be held under the penalty of the place claimed. But if the mediety of a manor be claimed, which has not been divided nor partitioned even without its appurtenances, a view shall be denied, because he may be ignorant which mediety belongs to the tenant. But if the manor has been partitioned and the mediety be claimed without its appurtenances, in the same manner a view shall be denied, but if with its appurtenances, it

f. 377.

erit, ut infra dicitur. Item cū medietatem petat quis alicujus manerii, cum sit indivisum cum pertinentiis vel sine, si visum petat de toto, non ei denegabitur ad similitudinem dotis, secundum quod inferius dicitur. Denegabitur etiam visus intrusori, cū res specificata fuerit in quam se intruserit sine pertinentiis, vel si fiat quod tantundem valet ut supradictū est: & ideo maximè si recens fuerit intrusio, recens dico unius anni vel minoris temporis, & hoc cū ille qui jus habet in re statim post intrusionem sibi perquisiverit in crastino vel infra septimanam, nisi rationabili de causa fuerit impeditus. Denegabitur etiam quandoque visus in petitione dotis, ubi mulier nomine dotis petierit aliquod manerium sine pertinentiis, unde nominatim dotata fuit, ut si dicat, Peto tale manerium ut dotem meam, unde A. quondam vir meus me nominatim dotavit ad ostium ecclesiæ die quo me desponsavit, & hoc casu tenens nullū visum habebit ratione ptinentiarum q̄ non nominantur; q̄ quidem aliud esset si cum ptinentiis, quia posset mulier petens tales ostendere ptinentias, de quibus tenens nullā ptem advocaret. Item in peñione dotis denegatur visus ppter incertitudinem, ut si nomine dotis petat mulier tertiam ptem alicujus manerii cum ptinentiis, vel sine, visum nō habebit, quia nullam certam partē designare potest. Si autē visum petierit de toto tenemento unde petit tertiā partē, visum habebit. Item si cū tenens visum petierit respondet mulier q̄ non petit nisi tertiam

will be another thing, as will be explained below. Likewise when a person claims the mediety of any manor, when it is undivided, with its appurtenances or without them, if he claims a view of the whole, it shall not be denied to him after the likeness of dower, according to what will be explained below. A view shall also be denied to an intruder, when the estate has been specified, into which he has intruded himself, without its appurtenances, or if there be done what is equivalent as has been explained above; and therefore more particularly, if the intrusion shall be recent, I mean recent when it has been for one year or a less time, and this when he who has the right in the estate forthwith after the intrusion has made a claim for himself on the morrow or within a week, except he has been impeded by a reasonable cause. A view shall also be sometimes denied in a claim of dower, where a woman in the name of dower has claimed some manor without its appurtenances, wherewith she has been specifically endowed, as if she should say, I claim such a manor as my dower, wherewith A., formerly my husband, specifically endowed me at the door of the church on the day on which he espoused me, and in this case the tenant shall have no view in regard of the appurtenances which are not named, which would be otherwise, if with the appurtenances, because the woman claiming might point out such and such appurtenances, no part of which the tenant would avow. Likewise in a claim for dower a view is denied on account of uncertainty, as if in the name of dower a woman claims a third part of any manor with its appurtenances or without them, she shall not have a view, because she cannot designate any certain part. But if she has claimed a view of the whole tenement whereof she claims a third part, she shall have a view. Likewise if when the tenant has claimed a view the woman answers that she does not claim other than the third part of that of which

partem de eo unde vir suus seysitus obiit ut de feodo, & tenens totum teneat & vir recenter obiit, tenēs visum non habebit, cūm habeat q̄ tantundē valet, scilicet unde vir suus obiit seysitus. Itē denegabitur visus mulieri, si hæres agat cōtra eam de dotis amēsuratione, cūm ipsa totū teneat de quo petitur amensuratio, & ratione præmissa, quia vir suus nuper obiit inde seysitus in tali villa, & hoc verum est, nisi ipsa aliud tenementum teneat in eadem villa. Item nec jacet visus ppter incertitudinē, sive nominentur pertinentiæ sive non, ut si quis sic petat terram aliquā, & sic dicat: Peto tantā terrā cum ptinentiis, s. quicquid tenens tenet ī tali villa ultra x. libratas terræ et de dono talis, quia īra q̄ petitur specificari nō potest, nisi prius facta extetione x. libratarū & viso & p̄bato quantum terræ talis teneat in tali villa, tūc primò pcedat sine visu de residuo & p̄ambula erit extensio, ut inter placita quæ sequuntur regem corā S. de Segrave, de Thoma de Dunholm cive Londoñ, et hoc verum esse poterit nisi visum petat de toto unde petit residuū ultra x. Plures etiam possunt esse tenentes successivē quorū nullus visum habebit, si petierit, nisi tantum primus tenens, verbi gratia, A. petit versus B. certam terram cum pertinentiis ut jus suum, si B. visum petat visum habebit, & nullus alius, quamvis warrantum vocaverit usq̄ ad x. Item nec tenens nec warrantus, ut si idem B. antequam visum petat vocaverit C. ad warrantum, & C. cūm venerit per suūmōitionem, antequam warrantizaverit vel post, visum petat,

f. 377 b.

her husband died seysed as of fee, and the tenant holds the whole and the husband has recently died, the tenant shall not have a view, since he has what is equivalent, to wit, that whereof the husband died seysed. Likewise a view shall be denied to the woman, if the heir proceeds against her for an admeasurement of dower, when she holds the whole of which an admeasurement is claimed, and for the reason above stated, because her husband lately died seysed thereof in such a vill, and this is true, unless she holds another tenement in the same vill. Likewise no view lies on account of uncertainty, whether the appurtenances be named or not, as if a person should thus claim a certain land and should thus say: I claim so much land with its appurtenances, to wit, whatever the tenant holds in such a vill beyond ten pounds worth of land of the donation of so-and-so, because the land which is claimed cannot be specified unless upon an extent having been made of the ten pounds worth, and upon a view having been made and proof having been given as to how much land so-and-so holds in such a vill, then let him proceed concerning the residue, and the extent shall be perambulatory, as amongst the pleas which follow the king before Stephen de Segrave, concerning Thomas de Dunholm, a citizen of London, and this may be true unless he claims a view of the whole whereof he claims the residue beyond ten [pounds worth]. There may also be several tenants successively, none of whom shall have a view, if he has claimed it, except only the first tenant, for instance. A. claims against B. a certain land with its appurtenances as his right, if B. claims a view he shall have a view, and no one else, although he may have called a warrantor up to ten. Likewise neither the tenant nor the warrantor, as if the said B. before he has claimed a view has called C. to warrant, and C. when he has come through a summons, before he has warranted or afterwards claims a view, he shall not have a view, because

f. 377 b.

visum non habebit, quia tenetur warrantus ad chartam suam respondere, vel ad chartas antecessorum suorum, in quibus specificatur terra illa petita. Et etiam si tenens chartas non habeat, scit aut scire deberet warrantus quam terrā tenens de eo tenuerit, & de qua terra cepit homagium & servitium illius, qui eum ad warrantū vocaverit, & cū per iudiciū vel alio modo warrantizaverit, scire debet warrantus q̄ & qualis sit terra de qua vocatus sit ad warrantū, & quanta. Et sic fiet de pluribus warrantis quod de uno dicitur, quorum nullus habebit visum, donec in placito illo perventum fuerit ad duellum, si tamen inde contingat duellum vadiari, & tunc post duellum sic vadiatū, & post vadia recepta fiat visus campionibus, & quia visus non processit in toto placito, dicatur eis q̄ infra diem eis datū terram illam videant, & hoc est p̄ sacramento suo q̄ inde facient de visu suo, secundū q̄ inferius videri poterit de sacramentis campionum. Item non jacet visus postquā semel terra capta fuerit in manum dñi regis per defaltā, quia sufficit quod tantundem valet, quia petens designare debet visoribus qualitatem terræ & quantitatem, quid & quantum petat, & per quas metas, & cū sic capta fuerit eodem modo & in eadem quantitate peti debet per plevinam, quod quidem sufficit p̄ visu. Conceditur tamen quandoque visus post defaltā ex abundanti & hoc p̄ sacramento campionum, ut de term̄ S. T. anno regis H. quarto.

3.
Si post
visum pe-
titum se
esson-

Item denegatur quandoq̄ visus, ut si semel concedatur & antequam tenens visum habuerit ad diem suum fecerit se essoniari, cū calumniare deberet q̄ visum

a warrantor is bound to answer to his own charter or to the charters of his ancestors, in which the land which is claimed is specified. And even if the tenant has no charters, the warrantor knows, or ought to know, what land the tenant holds from him, and concerning what land he has received the homage and the service of him, who has called him to warrant, and when he has warranted it by a judgment, or in some other manner, the warrantor ought to know what and what sort of land it is which he is called to warrant, and how much. And it shall so be done with several warrantors as is said of one, none of whom shall have a view until in that plea they have arrived at a duel; if however it should happen that a duel should be waged thereon, then after the duel has been so waged and the sureties have been given, let a view be granted to the champions, and because a view has not preceded throughout the whole plea, let it be said to them that they should view the said land within a certain day appointed to them, and this is upon their oath which they shall make regarding their view, according to what may be seen below concerning the oaths of champions. Likewise a view does not lie after the land has been taken into the hand of the lord the king by default, because it suffices that it is worth so much, because the claimant ought to designate to the viewers the quality of the land and the quantity, what and how much he claims, and by what metes; and when it has been thus taken it ought to be claimed in the same manner and in the same quantity by a plevine, which indeed suffices instead of a view. A view however is sometimes allowed after a default as a grace, and this in the place of the oath of the champions, as in Holy Trinity term in the fifth year of the king.

Likewise a view is sometimes denied, as if it be granted and before the tenant has had a view upon his own day he has caused himself to be essoined, when he ought to aver by a quirk that he has not had a view, according

3.
If after a
view has
been
claimed the
tenant has
essoined

averit non haberet, secundum q̄ fit de sūmonitionibus cūm
 tenens, et quis se essoniaverit, nisi calumniare deberet brevem
 postea dicat quod sūmonitionem.
 visum non habuerit.

CAP. IX.

1. Dicitur supra ubi visus non jacet in rebus corpora-
 Si de libus, quæ videri possunt, & tangi, & ratio quare.
 rebus in- libus, quæ videri possunt, & tangi, & ratio quare.
 corporali- Nunc autem videndum si de rebus incorporalibus pos-
 bus jaceat sit aut debeat fieri visus, sicut de juribus quæ insunt
 visus, sicut in rebus corporalibus, sicut de jure advocacionis, de
 de juribus. jure pascendi, eundi, & agendi, & hujusmodi. Et
 quamvis hujusmodi jura videri non possunt cū sint
 f. 378. invisibilia, nec palpari sicut corpora, tamē cum sine
 corpore vel subjecto quibus insunt esse non possunt,
 res illæ videri possunt & palpari, & unde sufficit p
 visu quòd res corporatæ in quibus jura consistunt
 designentur, vel per visum vel per quod tantundem
 valet. Per visum, ut si cui competat jus pascendi in
 fundo alieno, agendi, eundi, vel hujusmodi, sufficit si
 loca videantur in quibus jura sunt & consistunt, &
 sufficit si visus factus sit juratoribus, & eodem modo
 dici poterit de injuriis, sufficit enim si juratores vi-
 deant loca & facta, quamvis ipsa injuria congruè lo-
 quendo videri non possit, non magis quàm jus. Est
 enim jus, et ejus contrarium quod est injuria. Est
 enim injuria omne illud quod non est jus, & quod nō
 magis videri poterit quàm ipsum jus. Si quis enim
 in terris & tenementis quæ habuit ad terminum vitæ
 vel annorum, vel nomine alieno, sicut nomine cus-
 todia, & hujusmodi, vastum fecerit, non cōceditur
 visus ei de quo queritur in judicio. Sufficit enim si
 fiat visus inquisitoribus, nec etiam conceditur visus
 in actione personali, ut si custodia & maritagium ali-

to what takes place concerning summonses, when a person has essoined himself, unless he ought to aver by a quirk a short summons.

himself,
and after-
wards
should say
that he has
not had a
view.

CHAPTER IX.

It has been said above where a view does not lie of corporeal things, which may be seen and touched, and the reason wherefore. Now indeed it is to be seen, if a view can and ought to be made of incorporeal things, as of rights which are inherent in corporeal things, as of the right of advowson, of the right of fishing, of going and of driving, and such like. And although these rights cannot be seen since they are invisible, nor can they be handled like bodies, nevertheless since they cannot exist without the body or subject in which they are inherent, those things may be seen and handled, and hence it suffices instead of a view that the corporeal things in which those rights exist should be designated either by a view or by what is equivalent. By a view, as if a person be entitled to the right of feeding on another's ground, or of driving, or of going, or such like, it is sufficient if the places be seen in which the rights are and exist, and it suffices if a view has been made by the jurors, and in the same way it may be said of injuries, for it is sufficient, if the jurors see the places and the acts, although the injury itself cannot strictly speaking be seen, no more than a right. For there is a right and its contrary, which is an injury. For an injustice is every thing which is not a right and which cannot be seen any more than a right. For if any one has caused waste in lands or tenements which he has had for the term of his life or a term of years, or in another person's name, as in the name of guardianship or such like, a view is not allowed to him of that regarding which complaint is made in judgment. For it is sufficient if a view is made by the inquest, nor again is a view allowed in a personal action, as if the guardianship or marriage of

1.
If there
lies a view
of incor-
poreal
things, as
of rights.

f. 378.

cujus petatur, non est necesse specificare vel designare quantitatem hæreditatis. Si autem quis sic dicat: custodiam tantæ terræ, videtur quòd tunc sit aliud dicendum.

2.
Cum jus
advoca-
tionis petatur, et
plures sint
ecclesiæ.

Cum autem jus advocationis petatur, cùm illud jus videri non possit, sufficit si corpora designentur in quibus hujusmodi jus consistit, & sufficit pro visu, ut si quis dicat: peto advocationem ecclesiæ S. Mariæ de tali villa cum pertinentiis, & non sit nisi unica ecclesia S. Mariæ in eadem: sufficit pro visu, quia jus illud esse nō poterit in alia ecclesia. Si autem diversæ sint ecclesiæ, scilicet S. Petri & ecclesia S. Andreae, tunc assignari poterit ex nomine cui illarum insit illud jus advocationis quæ petitur. Si autem plures sint ecclesiæ cōstructæ sub nomine unius sancti, tunc oportet ita designare ex loco in qua ecclesia sit illud jus advocationis q̄ petitur, ut si dicat: peto advocationē ecclesiæ quæ sita est in vico tali versus orientē, vel versus occidentē. Si autem sit qui dicat quòd ratione ptinentiarum cōpetat visus, cùm dicatur peto advocationem illius ecclesiæ cum ptinentiis: sciendū est quòd nō fit relatio pertinentiarum ad ipsum jus, imō ad ecclesiam, secundum quod cōstruitur lignis & lapidibus, & non secundum q̄ ingressus & egressus ptinet ad jus pascendi et hujusmodi, & restitutio ad jus eundi, nec obstat quod dicitur q̄ in assisa ultimæ p̄sentationis juratores videre debeant ecclesiam illam ad quā fit p̄sentatio, quia nihil hic agitur de jure, sed q̄ ecclesia ad quam præsentatur designetur, secundum quod lignis & lapidibus construitur, et quæ quidem omnino sunt diversa, licet quodammodo sint con-

any one is claimed it is not necessary to specify or designate the quantity of the inheritance. But if some one should thus say, the guardianship of so much land, it seems that something different ought to be said.

But when the right of advowson is claimed, since ^{2.} that right cannot be viewed, it is sufficient if the bodies be designated in which a right of this kind consists, ^{When the right of advowson is claimed, and there are several churches.} and it suffices for a view, as if a person should say, I claim the advowson of the church of St. Mary in such a vill with its appurtenances, and there is but one church of St. Mary in the said vill: it suffices instead of a view, because that right cannot exist in any other church. But if there be divers churches, to wit, of St. Peter and the church of St. Andrew, then it can be assigned by name to which of the churches that right of advowson which is claimed applies. But if there are several churches constructed under the name of one saint, then it is incumbent to designate by the place to which church that right of advowson which is claimed applies, as if he should say, I claim the advowson of the church which is situated in such a street towards the east or towards the west. But if there be some one who says that a view is appropriate in regard of the appurtenances, since it is said, I claim the advowson of that church with its appurtenances: it is to be known that there is no relation of the appurtenances to the right itself, but to the church according as it is constructed of timber and stone, and not according as the entry or the exit pertains to the right of pasture and such like, and restitution to the right of going, nor is it an obstacle that it is said in an assise of last presentation that the jurors ought to view that church to which the presentation is made, for there is no question here of right, but that the church to which a presentation is made should be designated, according as it is constructed of timber and stone, and which things are altogether diverse, although they are somehow connected. And

nexa. Et aliquando petitus fuit visus de advocacione ecclesiæ, quia diversæ fuerunt ecclesiæ in eadem villa, sed postea per iudicium revocatus, & ita quòd breve de visu remansit, quia ecclesia in qua advocatio petebatur alio modo designari potuit per hoc quod tantūdem valuit, scilicet advocacionem eccelsiæ beati Petri: de hac materia de term̄ Sanctæ T. a. ii. post guer-ram, in comitatu Cant., de abbate de Nutlegh.

3.
Si jus ad-
vocationis
capi debeat
in manum
regis.

f. 378 b.

Sed cūm jus advocacionis ecclesiæ incorporale sit, & per defaltam tenentis aliquando præcipiatur vic. quòd illam capiat in manum domini regis, cūm sit incomparabile, invisibile, impalpabile. Et q palpari non potest, qualiter potest in manum domini regis capi, q videtur esse impossibile? Responsio. Revera nullum jus esse poterit sine corpore & subjecto cui adhæreat. Si autem dicatur q adhæreat fundo vel tenemento in quo ecclesia sita est, tunc videtur prima facie quòd capi debeat fundus & p cōsequens jus advocacionis ecclesiæ illius, sed fundus non capitur, quia jus advocacionis fundo non adhæret imēdiatē, sed per medium, quod est ecclesia talis, secundum quod cōstruitur lignis & lapidibus, & secundum quod superius dictum est: Jus advocacionis talis ecclesiæ, & non jus advocacionis talis fundi, & ideo cūm jus advocacionis adhæreat ecclesiæ dicatur vicecomiti quòd capiat ecclesiā in manum dñi regis simplici captione, & per cōsequens capit id quod inest corpori, sicut videri poterit de jure pascendi & hujusmodi.

sometimes the view of the advowson of a church was claimed, because there were divers churches in the same vill, but afterwards it was revoked by a judgment, and so that the writ for a view was stayed, because the church of which the advowson was claimed could be designated in some other manner by this which was equivalent, to wit, the advowson of the church of the Blessed Peter. Concerning this matter there is a case in Holy Trinity term in the second year after the war, in the county of Kent, concerning the abbot of Nutleggh.

But since the right of advowson of a church is incorporeal, and through the default of the tenant it is sometimes enjoined to the viscount that he should take it into the hand of the lord the king, when it is unapparent, invisible, impalpable. And what cannot be handled, how can it be taken into the hand of the king, which seems to be impossible? The answer. In truth no right can be without a body and a subject to which it adheres. But if it be said that it adheres to the land or the tenement in which the church is situated, then it appears at first sight that the land ought to be taken, and as a consequence the right of advowson of that church; but the land is not taken, because the right of advowson does not adhere immediately to the land, but through a medium, which is the said church, according as it is constructed of timber and stones, and according to what has been said above: The right of advowson of the said church, and not the right of advowson of the said land, and accordingly since the right of advowson adheres to the church, let it be said to the viscount that he should take the church into the hand of the king by a simple caption, and as a consequence he takes that which is in the body, as may be seen concerning the right of pasture, and such like.

3.
If the right
of advow-
son ought
to be taken
into the
hand of
the king.
f. 378 b.

4.
Ubi visus
jacet vel
tantun-
dem.

Ubi visus jacet? & dico quòd jacet generaliter. In primis de omnibus terris petitis per breve de recto aperto, vel per alia brevia clausa in quibus pervenitur ad duellum, & maximè propter sacramentum campionum (ut prædictum est), & eodem modo si ad magnam assisam. Item jacet ubicunque res corporalis petitur, quæ aliter designari non possit, quòd certa res deducatur in juditium, nisi videatur directè vel indirectè: directè dico, ut si terra vel aliqua res corporalis petatur sine pertinentiis ppter certitudinem corporis, quia tenens per hoc statim scire potest, utrum tale corpus teneat totum vel ejus partem vel nihil. Indirectè, ut si alio modo designari possit per id quod tantundem valet quantum valet visus, & per quod certitudo haberi possit quæ & qualis sit res quæ petitur, ut si dicatur: peto tantā terram cum pertinentiis unde talis nuper obiit seysitus, vel quam talis nup warrantizavit, vel totam terram quam talis tenet in eadem villa (si plus nō tenuerit) vel in com vel in tali loco, vel talem q̄ capta fuit in manum dñi regis, & per tenentem replegiata, vel talē quam ego vel alius tibi tradidit, vel de qua disseysinā fecisti, vel quas tenes de dono talis, vel de ballivo dñi regis, & hujusmodi. Item jacet in placito, quo warranto, ubi actio datur tam in rem qm in psonam ratione pertinentiarum. Et de eschaetis domini regis de terris Normaniæ. Item jacet de tenementis de quibus aliquis redditus pvenit. Et si de redditu petatur, non jacet, nec etiam erit redditus liberum tenementum nisi ex tenementis jus proveniat, quia de camera nō, vel hujusmodi. Itē jacet visus de tenemento in quo quis comuniam petit p breve de recto, & jus pascendi, nisi

Where does a view lie? And I say that it lies generally. In the first place respecting all lands, which are claimed by an open writ of right, or by other close writs in which a duel is arrived at, and chiefly on account of the oath of the champion (as said above), and in the same manner if a great assise is arrived at. Likewise it lies wherever a corporeal thing is sought, which cannot be otherwise designated, so that a certain thing may be brought into judgment, unless it be viewed directly or indirectly. I mean by directly, as if a land or other corporeal thing be claimed without its appurtenances, on account of the certainty of the body, because the tenant may know thereby immediately whether such a body hold the whole or a part of it, or nothing. Indirectly, as if it may be designated in another manner by that which is equivalent to a view, and whereby a certitude may be acquired what and of what sort is the thing which is claimed, as if it be said: I claim so much land with its appurtenances whereof so-and-so died seysed, or which so-and-so lately warranted, or the whole land which so-and-so holds in the said vill (if he has not held more) or in the county or in such a place, or such as was taken into the hand of the lord the king, and replevined by the tenant, or such as I or another delivered to you, or of which you have made a disseysine, or which you hold by the donation of so-and-so, or from the bailiff of the lord the king, or such like. Likewise it lies in a plea of *Quo warranto*, where an action is given as well against the thing as against the person in regard of the appurtenances. And respecting the escheats of the lord the king from the lands of the Normans. Likewise it lies respecting tenements from which any rent results. And if the claim be for rent, it does not lie, nor will rent be a free tenement unless a right results from the tenement, because it does not lie for a chamber or such like. Likewise a view lies concerning a tenement in which a person seeks a community through a writ of right, and a right of pasture, unless it can be otherwise desig-

4.
Where a
view lies,
or its
equivalent.

aliter designari possit ut supradictum est, quia poterit ille qui cōvenitur tenementum habere, in quo petens nullam cōmuniam clamare poterit. Item jacet visus si secta petatur ab aliquo, si plura habeat tenementa in eadem villa, ut sciri possit & certificari ratione cuius tenementi secta petatur, vel cūm plures petat, non debeat tenens nisi unam, secundum q videri poterit de term S. T. anno regis H. 2 post guerrā, in cōm Kanc., de magistro militiæ Templi. Et eodem modo in iuribus quibusdā jacet visus, si res vel loca quib⁹ jura insunt designari nō possūt p id q tantundē valet, sicut in cōmunia pasturæ & hujusmodi.

CAP. X.

f. 379.
1.
De irrotu-
latione
post visum
concessum.

Cum autē visus denegari nō possit, tunc fiat irrotulatio hoc modo, A. petit versus B. tantā terram cum ptinentiis in tali villa ut jus suū &c., vel tantum redditus, vel talem cōmuniam pasturæ, vel q ei faciat sectam, et hujusmodi &c. Et B. venit & petit visum de tenemento unde talis redditus pvenit, vel de tenemento in quo clamat talē pasturam, vel de tenemento de quo A. petit sectam & hujusmodi, secundum q brevia originalia habeat. Dies datus est eis in oct̄ & interim &c. Et eodem modo si dos petatur vel aliquid per breve de ingressu, tūc sic: A. petit versus B. tantam terrā cum ptinentiis in tali villa ut dotem suam, vel ut jus suum, et in quam idem B. non habet ingressum nisi per talem &c. Et sic variatur irrotulatio secundū varietatē placitorum, & secundū hujusmodi irrotulationes variantur brevia quæ talia sunt.

nated as aforesaid, because he who is convened may have a tenement in which the claimant cannot claim any community. Likewise a view lies if a sect be claimed by any one, if he has several tenements in the same vill, that it may be known and certified in regard of which tenement the sect is claimed, or when he claims several, the tenant owes only one, according to what may be seen in Holy Trinity term in the second year of king Henry after the war, in the county of Kent, concerning the master of the knights of the Temple. And in the same manner a view lies in certain rights, if things or places, in which rights are inherent, cannot be designated through that which is equivalent, as in common of pasture and such like.

CHAPTER X.

f. 379.

But when a view cannot be denied, then let an enrolment be made in this manner: A. claims against B. so much land with its appurtenances in such a vill as his right, &c., or so much rent, or so much common of pasture, or that he make him a sect, and such like, &c. And B. comes and claims a view of the tenement from which such a rent proceeds, or of the tenement in which he claims such a pasture, or of the tenement concerning which A. claims a sect, and such like according to what the original writs contain. A day is given to them in the octave, and meanwhile, &c. And in the same way if dower is claimed or anything by a writ of entry, then thus: A. claims against B. so much land with its appurtenances in such a vill as her dower, or as her right, and into which the said B. has no entry except through so-and-so, &c. And so the enrolment is varied according to the variety of the pleas, and according to enrolments of this kind the writs are varied, which are of this kind.

1.
Concerning
the enrol-
ment after
a view has
been gran-
ted.

Q 6366.

H H

2. Rex vic. salutē. Præcipimus tibi q sine dilatione habere facias B. visum de tanta terra cum ptinentiis in N. quam A. de N. in curia nostra coram justic. nostris apud W. clamat ut jus suum versus prædictū B., et dic quatuor militibus ex illis qui visui illi interfuerint, quòd sint corā eisdē justic. nostris apud W. vel coram nobis ubicunq tunc fuerimus in Anglia, tali die &c. ad testificandum visum illum. Et habeas ibi nomina militum & hoc breve. Teste &c. Variantur autem hujusmodi brevia multipliciter, & sic s.: habere facias visum B. de tenemento in tali villa, unde redditus x. solidi cum ptinentiis pvenit, quem redditum A. de N. in curia nostra &c. clamat ut jus suū versus p̄dictū B., et dic &c. ut supra, vel sic: visum de tanta terra cum ptinētiis in N. unde B. quæ fuit uxor C. nominatim dotata fuit.

3. Vel si forte aliquam certam ptem & separatam petat p̄ diviso, tunc sic: visum de tanta fra &c. quā A. q̄ fuit uxor D. in curia &c. clamat in dotē versus eum. Si autē clamaverit tertiā ptē incertā & indeterminatā alicujus totius, tunc sic: visū de tanta terra cum ptinentiis &c. unde A. quæ fuit uxor C. in curia nra &c. clamat tertiā ptem in dotē versus eum. Et dic &c. Si autē placitetur de cōmunia pasturæ per b̄re de recto, Quo jure, tunc sic.

4. Præcipimus tibi q sine dilatione habere facias A. visum de cōmuna pasturæ in tali villa quā B. de N. clamat ut ptinētē ad liberū tenemētum suū in eadē villa, vel in alia, versus eundē A., & unde idē B. sumonitus est in eadē curia nra ad ostēdendū quo jure talē cōmuniā pasturæ clamat in terra ipsius A., desicut idē A. nullā cōmuniā habet in terra ipsius B.

The king to the viscount greeting. We enjoin you that without delay you cause B. to have a view of so much land with its appurtenances in N., which A. de N. in our court before our justiciaries at Westminster claims as his right against the aforesaid B., and say to four knights of those who have taken part in that view, that they be present before our said justiciaries at Westminster, or before us wherever we may be in England on such a day, &c., to testify to that view. And have there the names of those knights and this writ. Witness, &c. But writs of this kind are varied in manifold ways, and thus, to wit: cause B. to have a view of a tenement in that vill, from which a rent of ten shillings with appurtenances is derived, which rent A. de N. in our court &c. claims as his right against the aforesaid B., and say as above: or thus, a view of so much land with its appurtenances in N., wherewith B. who was the wife of C. has been specifically endowed.

Or if by chance a certain separate part, as her division, then thus: a view of so much land, &c., which A. who was the wife of D. in our court claims as her dower against him. But if she claims a third uncertain and indeterminate part of a certain whole, then thus: a view of so much land with its appurtenances, &c., and whereof A., who was the wife of C., in our court, &c. claims the third part for her dower against him, and say, &c. But if the plea be for common of pasture through a writ of right, *quo jure* then thus:

We enjoin you that you cause A. without delay to have a view concerning common of pasture in such a vill, which B. de N. claims as appurtenant to a free tenement of his in the said vill or in another, against the said A., and whereof the said B. has been summoned in our said court to show by what right he claims such a common of pasture in the land of the said A., since the said A. has no common of pasture in the land

nec idē B. ei serviitiū facit, quare ibi cōmuniā habere debeat, & dic &c., vel sic: visum de cōmunia pasturæ in tali villa, qm B. in curia nra corā justic. &c. clamat versus eundē A. ut ptinentē ad liberū teñtū suū in eadē villa, vel in alia, & unde idē A. dicit q p̃dictus B. nullā cōmuniā ibi habere debet, eo q idē B. nullā cōmuniam in tra ipsius habet, nec idē ei serviitiū facit, quare cōmuniā habere debeat & dic &c. Et sic semp formāda erūt brevia de visu secūdū formā breviū originaliū. Si autē fieri debeat visus in brevi

f. 379 b. quo warranto teneat quis terrā aliquā q̃ debeat esse eschaeta dñi regis, tunc sic: visum de tanta terra cum ptinentiis in tali villa, & unde idem talis suñonitus est ad ostendendū quo warranto tenet tantam terrā cum ptinentiis in tali villa quam nos in curia nostra clamamus versus eum ut eschaetam nostram de terris Normannorum.

CAP. XI.

1. Ad alium vero diē post visum cōcessum & factū, Ad diem datum post visum habitum reincipiatur essonium. reincipiāt partes si voluerint omnia essonia sua, tam petens quā tenens. Et sive venerint sive non, vic. dicere dibet iv. militibus, qui visui illi interfuerint, q̃ sint ad diē datum ad testificandum visum illum. Ad qm diem sive partes venerint, sive se essoniaverint, cūm visus testatus fuerit per quatuor milites visores,

of the said B., nor does the said B. do to him any service wherefore he ought to have a common there, and say &c., or thus: a view of common of pasture in such a vill, which B. in our court before our justiciaries &c. claims against the said A. as appertaining to his free tenement in the said vill or in another, and whereof the said A. says that the said B. ought to have no right of common, inasmuch as the said B. has no community in his land, nor does he do to him any service wherefore he ought to have a right of common, and say &c. And writs for making a view are always to be formulated according to the form of the original writs. But if a view ought to be made in a writ of *Quo warranto* a person holds a certain land which ought to be an escheat of the lord the king, then thus: a view of so much land with the appurtenances in such a vill, and whereof the said so-and-so has been summoned to show by what warrant he holds so much land with its appurtenances in such a vill, which we claim in our court against him as our escheat of the lands of the Normans. f. 379 b.

CHAPTER XI.

But upon another day after a view has been allowed and has been made, let the parties recommence, if they wish, all their essoins, as well the claimant as the tenant. And whether they have come or not, the viscount ought to say to the four knights, who have taken part in that view, that they should be present on an appointed day to testify to that view. Upon which day whether parties have come or have essoined themselves, when the view has been attested by the four knights the viewers, reliance shall always be had upon their 1. At the appointed day after a view has been had an essoin may be recommenced.

Britton, ii. exviii. § 8. semp stabitur eorum recordo, & si forte essioniu inter-
jectu fuerit, fiat mentio semper in essionio q visus
testatus sit, & si forte testatus nō fuerit, & tenēs ad
diē suū venerit, & docere possit q visum nō habuerit,
habebit aliū diē, nisi ipse petens docuerit cōtrarium,
sub piculo joci partiti.

Cf vol. iii.
p. 311.

2. Cū autē placitū à cōm translatū fuerit ad magnā
curiā, & cū visum habuerit in cōm, objiciatur ei in
magna curia q visum habuerit in cōm, inquiratur de
petente si de hoc ponere se voluerit super recordū
cōm, qui de hoc habet recordum, vel non, & quo casu
si petens hoc voluerit, fiat recordū de hoc p cōm, &
veniat recordū corā justic.; sed raro cōtingit q petēs
eligat viā istā ad placitum suū differendū, cūm cōmo-
dius sit ei iterum visum cōcedere, quā de visu habito
ad inquisitionem per comitatum pcedere.

CAP. XII.

1. In visu autē faciēdo, tenenti debet petens designare
Qualiter petens de-
bet designare te-
nenti rem
petitam, ut
sciri pos-
sit, si istam
tenuerit
vel non.
rem petitā omnibus modis quibus poterit, coram illis
qui ad hoc cōvocantur, tam in corpore ipsius rei quā
in ejus ptinentiis, cū difficile sit de incerta re certum
pferre juditium. Et talis erit designatio, s. ut si
dicatur: Peto tale maneriū p metas & divisas istas &
tales ptinentias, ut per hoc ppendi possit utrum tenens
totum maneriū cum ptinentiis teneat, vel ejus partē,
vel nihil. Et sufficit si maneriū petierit cum ptinētiis

record, and if by chance an essoin has been interposed, let mention always be made in the essoin that the view has been attested, and if by chance it has not been attested, and the tenant has come upon his appointed day, and can show that they have not made a view, he shall have another day, unless the claimant himself can show the contrary, under the risk of a jeopardy.

But when a suit has been transferred from the county to the great court, and when he has had a view in the county, it should be objected to him in the great court that he has had a view in the county, let it be inquired of the claimant, if he wishes thereon to put himself upon the record of the county, which has a record thereof, or not, and in which case if the claimant wishes this, let a record thereof be made through the county, and let the record come before the justices; but it rarely happens that the claimant chooses that way to put off his suit, since it is more advantageous to allow him for a second time a view, than to proceed to an inquisition through the county concerning a view which has been had.

2. If the trial has been transferred to the great court from the county court, and there shall be a dispute respecting a view having been had or the county.

CHAPTER XII.

But in making a view, the claimant ought to designate to the tenant the thing claimed in every way in which he can, before those who are convoked for this purpose, as well in the body of the thing itself as in its appurtenances, since it is difficult to pronounce a certain judgment upon an uncertain thing. And of this kind shall be the designation, as if it be said: I claim such a manor by such metes and bounds and such appurtenances, so that it may thereby be ascertained, whether the tenant holds the entire manor with the appurtenances, or a part, or none. And it suffices, if he

1. In what way the claimant should designate to the tenant the thing claimed, that it may be known, if he has it or not.

p certas divisas, nec oportet glebas manerii circumire, & ppter hoc nō cadit breve, si forte sit aliquis qui terram tenuerit infra corpus manerii, de qua tenens nihil habuerit, nec in servitio nec in dominico, dum tamen fiat ptestatio à petente, q nihil inde clamat in dñico nec in servitio.

2. Cùm vero de visu facto aliquando inter ptes fiat cōtentio, ut si dicat tenens q petens plus posuit in visu suo vel minus qm in brevi cōtineatur: ut de term̃ S. M. añ regni regis H. decimoquarto incipiente decimoquinto circa principiū, sub pœna amissionis fiat inquisitio de veritate, & secundū quod inveniri poterit de termino Sanctæ Trinitatis anno regni regis H. secūdo post guerrā in cōm Wilt. de Galfrido de Chessewicke: cū ptes se inde posuerunt in inquisitionē patriæ, & gratis se posuerint in certas psonas, quatuor vel sex, cum quibusdam qui visui interfuerint, tunc veniat inquisitio ad certificādū de veritate p tale breve.

3. Rex vic. salutē. Præcipimus tibi quòd venire facias coram justic. nostris tali die &c. A. servientē talis, & attornatum suum in loquela q̃ est inter eundem A. talē & talē, de tanto terræ cum ptinentiis &c. Et similiter cum eo A. B. C. D., super quos p̃dicti tales se posuerunt, & p̃terea quatuor ex illis qui visui interfuerint, qm p̃dictus A. attornatus talis petentis fecit tali tenenti, s. de prato vel terra cum ptinentiis in tali villa, quod

Si contentio habeatur quantum terræ positum fuerit in visu, aliquando fit inde jocus partitus.
cf. p. 380.

Si fiat inquisitio, tunc sic.

has claimed a manor with its appurtenances by certain boundaries, nor is it necessary to make a circuit of the glebe of the manor, and on that account the writ does not fall, if by chance there be any one who has held land within the body of the manor, of which the tenant holds nothing, neither in service nor in domain, provided however there be a public declaration on the part of the plaintiff that he claims nothing thereof in domain or in service.

But since there is sometimes a dispute between the parties concerning the view made, as if the tenant should say that the claimant has put into the view more or less than is contained in the writ, as in the term of St. Michael in the fourteenth and fifteenth years of the reign of king Henry, about the beginning [of the roll], under penalty of losing it let an inquisition be made concerning the truth, and according to what may be found in the term of Holy Trinity in the second year of the reign of king Henry after the war, in the county of Wilts, concerning Galfrid de Chessewicke : when the parties had put themselves thereon on an inquisition of the county, and had gratuitously put themselves on certain persons, four or six, with certain persons who had taken part in the view, then let an inquisition come to certify concerning the truth through a writ of this kind.

2.
If there be a dispute how much land has been included in the view, there is sometimes made of it an alternative risk.
p. 380.

The king to the viscount greeting. We enjoin you that you cause to come before our justiciaries on such a day &c. A. the servant of so-and-so, and his attorney in the trial which is between the said A. and so-and-so concerning so much land with its appurtenances &c. And in like manner with him A. B. C. D., upon whom the parties aforesaid have put themselves, and besides four of those who have taken part in the view, which the aforesaid A. the attorney of so-and-so the claimant has made for the said tenant, to wit, concerning the meadow or land with its appurtenances in such a vill, which

3.
If an inquisition be thereon made, then thus.

pratum, vel quam terram, idem talis clamat ut jus suum versus eundem talē, ad certificandum p̃fatos justic. nostros quid & quantum prati vel terræ idem A., attornatus s. ipsius talis, petentis s., posuit in visu suo. Et unde idem talis, tenens s., dicit q̃ idem A. non posuit in visu suo nisi tantū prati vel tantū terræ, & in diversis locis, & tot particulas, & ita se inde interim certificēt, quòd p̃fatos justic. nostros ad eundem diem plenius inde certificare possunt. Et habeas ibi hoc breve. Teste &c.

Habito sic visu, statim perpendere potest tenens
 Habito visu tunc warrantum vocet tenens, si voluerit, si warrantum habeat. utrum terram petitam teneat, vel ejus ptem, vel nihil: ut si totā teneat, sic statim ad diem suū respondeat, vel si warrantum habeat, illū vocet qui ipsum in seysina sua defendat. Si autem nihil inde teneat, nec in dominico nec in servitio, vel nisi ejus partē, q̃ de brevi illo recedat quietus. Sed quoniam quandoquē melius erit & tutius tenenti warrantū vocare, quā in psonam suam defensionis periculum suscipere, cū plures forte & aliæ competant exceptiones warranto quā tenēti, ideo prius tractandū erit de warranto & ejus vocatione.

FINIS TRACTATUS TERTII LIBRI QUINTI.

meadow or which land the said so-and-so claims as his right against the said so-and-so, to certify our justiciaries aforesaid what and how much meadow or land the said A. the attorney, to wit, of the said so-and-so the claimant, to wit, has put in his view. And whereof the said so-and-so the tenant, to wit, says that the said A. has only put in his view so much meadow or so much land, and in different places, and so many small parts, and let them in the meanwhile so certify themselves thereof, that they may be able to certify our aforesaid justiciaries more fully thereof on the same day. And do thou have there this writ. Witness &c.

A view having thus been had, the tenant may forthwith determine whether he will keep the whole of the land claimed, or a part of it, or nothing; that, if he keeps the whole, he may forthwith answer at once on his appointed day, or if he have a warrantor, he may call him, who may maintain him in his seysine. But if he holds nothing thereof, neither in domain nor in service, or only a part of it, that he may withdraw acquitted from that writ. But since sometimes it will be better and safer for the tenant to call a warrantor, than to take upon his own person the danger of a defence, since more exceptions by chance and other are available to a warrantor than to a tenant, for that reason let us first treat of a warrantor and the calling of him.

4.
Upon a
view hav-
ing been
made, let
the tenant
then call a
warrantor,
if he
wishes, if
he has a
warrantor.

HERE ENDS THE THIRD TREATISE OF THE FIFTH BOOK.

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THE CHRONICLES AND MEMORIALS OF GREAT BRITAIN AND IRELAND DURING THE MIDDLE AGES.

[ROYAL 8vo. half-bound. *Price* 10s. each Volume or Part.]

On 25 July 1822, the House of Commons presented an address to the Crown, stating that the editions of the works of our ancient historians were inconvenient and defective; that many of their writings still remained in manuscript, and, in some cases, in a single copy only. They added, "that an uniform and convenient edition of the whole, published under His Majesty's royal sanction, would be an undertaking honourable to His Majesty's reign, and conducive to the advancement of historical and constitutional knowledge; that the House therefore humbly besought His Majesty, that He would be graciously pleased to give such directions as His Majesty, in His wisdom, might think fit, for the publication of a complete edition of the ancient historians of this realm, and assured His Majesty that whatever expense might be necessary for this purpose would be made good."

The Master of the Rolls, being very desirous that effect should be given to the resolution of the House of Commons, submitted to Her Majesty's Treasury in 1857 a plan for the publication of the ancient chronicles and memorials of the United Kingdom, and it was adopted accordingly. In selecting these works, it was considered right, in the first instance, to give preference to those of which the manuscripts were unique, or the materials of which would help to fill up blanks in English history for which no satisfactory and authentic information hitherto existed in any accessible form. One great object the Master of the Rolls had in view was to form a *corpus historicum* within reasonable limits, and which should be as complete as possible. In a subject of so vast a range, it was important that the historical student should be able to select such volumes as conformed with his own peculiar tastes and studies, and not be put to the expense of purchasing the whole collection; an inconvenience inseparable from any other plan than that which has been in this instance adopted.

Of the Chronicles and Memorials, the following volumes have been published. They embrace the period from the earliest time of British history down to the end of the reign of Henry VII.

1. **THE CHRONICLE OF ENGLAND**, by JOHN CAPGRAVE. *Edited by* the Rev. F. C. HINGESTON, M.A., of Exeter College, Oxford. 1858.

Capgrave was prior of Lynn, in Norfolk, and provincial of the order of the Friars Hermits of England shortly before the year 1464. His Chronicle extends from the creation of the world to the year 1417. As a record of the language spoken in Norfolk (being written in English), it is of considerable value.

2. **CHRONICON MONASTERII DE ABINGDON**. Vols. I. and II. *Edited by* the Rev. JOSEPH STEVENSON, M.A., of University College, Durham, and Vicar of Leighton Buzzard. 1858.

This Chronicle traces the history of the great Benedictine monastery of Abingdon in Berkshire, from its foundation by King Ina of Wessex, to the reign of Richard I., shortly after which period the present narrative was drawn up by an inmate of the establishment. The author had access to the title-deeds of the house; and incorporates into his history various charters of the Saxon kings, of great importance as illustrating not only the history of the locality but that of the kingdom. The work is printed for the first time.

3. **LIVES OF EDWARD THE CONFESSOR.** I.—*La Estoire de Seint Aedward le Rei.* II.—*Vita Beati Edvardi Regis et Confessoris.* III.—*Vita Eduuardi Regis qui apud Westmonasterium requiescit.* *Edited by* HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge. 1858.

The first is a poem in Norman French, containing 4,686 lines, addressed to Alianor, Queen of Henry III., probably written in 1245, on the restoration of the church of Westminster. Nothing is known of the author. The second is an anonymous poem, containing 536 lines, written between 1440 and 1450, by command of Henry VI., to whom it is dedicated. It does not throw any new light on the reign of Edward the Confessor, but is valuable as a specimen of the Latin poetry of the time. The third, also by an anonymous author, was apparently written for Queen Edith, between 1066 and 1074, during the pressure of the suffering brought on the Saxons by the Norman conquest. It notices many facts not found in other writers, and some which differ considerably from the usual accounts.

4. **MONUMENTA FRANCISCANA.** Vol. I.—*Thomas de Eccleston de Adventu Fratrum Minorum in Angliam. Adæ de Marisco Epistolæ. Registrum Fratrum Minorum Londoniæ.* *Edited by* J. S. BREWER, M.A., Professor of English Literature, King's College, London. Vol. II.—*De Adventu Minorum; re-edited, with additions. Chronicle of the Grey Friars. The ancient English version of the Rule of St. Francis. Abbreviatio Statutorum, 1451, &c.* *Edited by* RICHARD HOWLETT, Esq., of the Middle Temple, Barrister-at-Law. 1858, 1882.

The first volume contains original materials for the history of the settlement of the order of Saint Francis in England, the letters of Adam de Marisco, and other papers connected with the foundation and diffusion of this great body. It was the aim of the editor to collect whatever historical information could be found in this country, towards illustrating a period of the national history for which only scanty materials exist. None of these have been before printed. The second volume contains materials found, since the first volume was printed, among the MSS. of Sir Charles Isham, and in various libraries.

5. **FASCICULI ZIZANIORUM MAGISTRI JOHANNIS WYCLIF CUM TRITICO.** Ascribed to THOMAS NETTER, of WALDEN, Provincial of the Carmelite Order in England, and Confessor to King Henry the Fifth. *Edited by* the Rev. W. W. SHIRLEY, M.A., Tutor and late Fellow of Wadham College, Oxford. 1858.

This work derives its principal value from being the only contemporaneous account of the rise of the Lollards. When written the disputes of the schoolmen had been extended to the field of theology, and they appear both in the writings of Wycliff and in those of his adversaries. Wycliff's little bundles of tares are not less metaphysical than theological, and the conflict between Nominalists and Realists rages side by side with the conflict between the different interpreters of Scripture. The work gives a good idea of the controversies at the end of the 14th and the beginning of the 15th centuries.

6. **THE BUIK OF THE CRONICLIS OF SCOTLAND; or, A Metrical Version of the History of Hector Boëce; by WILLIAM STEWART.** Vols. I., II., and III. *Edited by* W. B. TURNBULL, Esq., of Lincoln's Inn, Barrister-at-Law. 1858.

This is a metrical translation of a Latin Prose Chronicle, and was written in the first half of the 16th century. The narrative begins with the earliest legends, and ends with the death of James I. of Scotland, and the "evil ending of the traitors that slew him." Strict accuracy of statement is not to be looked for in such a work as this; but the stories of the colonization of Spain, Ireland, and Scotland are interesting if not true; and the chronicle is valuable as a reflection of the manners, sentiments, and character of the age in which it was composed. The peculiarities of the Scottish dialect are well illustrated in this metrical version, and the student of language will find ample materials for comparison with the English dialects of the same period, and with modern lowland Scotch.

7. **JOHANNIS CAPGRAVE LIBER DE ILLUSTRIBUS HENRICIS.** *Edited by the Rev. F. C. HINGESTON, M.A., of Exeter College, Oxford.* 1858.

This work is dedicated to Henry VI. of England, who appears to have been, in the author's estimation, the greatest of all the Henries. It is divided into three parts, each having a separate dedication. The first part relates only to the history of the Empire, and extends from the election of Henry I., the Fowler, to the end of the reign of the Emperor Henry VI. The second part is devoted to English history, and extends from the accession of Henry I. in 1100, to 1446, which was the twenty-fourth year of the reign of Henry VI. The third part contains the lives of illustrious men who have borne the name of Henry in various parts of the world.

Capgrave was born in 1393, in the reign of Richard II., and lived during the Wars of the Roses, for the history of which period his work is of some value.

8. **HISTORIA MONASTERII S. AUGUSTINI CANTUARIENSIS,** by THOMAS OF ELMHAM, formerly Monk and Treasurer of that Foundation. *Edited by CHARLES HARDWICK, M.A., Fellow of St. Catharine's Hall, and Christian Advocate in the University of Cambridge.* 1858.

This history extends from the arrival of St. Augustine in Kent until 1191. Prefixed is a chronology as far as 1418, which shows in outline what was to have been the character of the work when completed. The only copy known is in the possession of Trinity Hall, Cambridge. The author was connected with Norfolk, and most probably with Elmham, whence he derived his name.

9. **EULOGIUM (HISTORIARUM SIVE TEMPORIS) :** Chronicon ab Orbe condito usque ad Annum Domini 1366 ; a Monacho quodam Malmesbiriensi exaratum. Vols. I., II., and III. *Edited by F. S. HAYDON, Esq., B.A.* 1858-1863.

This is a Latin Chronicle extending from the Creation to the latter part of the reign of Edward III., and written by a monk of the Abbey of Malmesbury, in Wiltshire, about the year 1367. A continuation, carrying the history of England down to the year 1413, was added in the former half of the fifteenth century by an author whose name is not known. The original Chronicle is divided into five books, and contains a history of the world generally, but more especially of England to the year 1366. The continuation extends the history down to the coronation of Henry V. The Eulogium itself is chiefly valuable as containing a history, by a contemporary, of the period between 1356 and 1366. The notices of events appear to have been written very soon after their occurrence. Among other interesting matter, the Chronicle contains a diary of the Poitiers campaign, evidently furnished by some person who accompanied the army of the Black Prince. The continuation of the Chronicle is also the work of a contemporary, and gives a very interesting account of the reigns of Richard II. and Henry IV. It is believed to be the earliest authority for the statement that the latter monarch died in the Jerusalem Chamber at Westminster.

10. **MEMORIALS OF HENRY THE SEVENTH :** Bernardi Andrea Tholosatis Vita Regis Henrici Septimi ; necnon alia quædam ad eundem Regem spectantia. *Edited by JAMES GAIRDNER, Esq.* 1858.

The contents of this volume are—(1) a life of Henry VII., by his poet laureate and historiographer, Bernard André, of Toulouse, with some compositions in verse, of which he is supposed to have been the author ; (2) the journals of Roger Machado during certain embassies on which he was sent by Henry VII. to Spain and Brittany, the first of which had reference to the marriage of the King's son, Arthur, with Catharine of Arragon ; (3) two curious reports by envoys sent to Spain in the year 1505 touching the succession to the Crown of Castile, and a project of marriage between Henry VII. and the Queen of Naples ; and (4) an account of Philip of Castile's reception in England in 1506. Other documents of interest in connexion with the period are given in an appendix.

11. **MEMORIALS OF HENRY THE FIFTH.** I.—Vita Henrici Quinti, Roberto Redmanno auctore. II.—Versus Rhythmici in laudem Regis Henrici Quinti. III.—Elmhams Liber Metricus de Henrico V. *Edited by CHARLES A. COLE, Esq.* 1858.

This volume contains three treatises which more or less illustrate the history of the reign of Henry V., viz.: *A Life* by Robert Redman; a *Metrical Chronicle* by Thomas Elmham, prior of Lenton, a contemporary author; *Versus Rhythmici*, written apparently by a monk of Westminster Abbey, who was also a contemporary of Henry V. These works are printed for the first time.

12. **MUNIMENTA GILDHALLÆ LONDONIENSIS; Liber Albus, Liber Custumarum, et Liber Horn, in archivis Gildhallæ asservati.** Vol. I., *Liber Albus*. Vol. II. (in Two Parts), *Liber Custumarum*. Vol. III. Translation of the Anglo-Norman Passages in *Liber Albus*, Glossaries, Appendices, and Index. *Edited by* HENRY THOMAS RILEY, Esq., M.A., Barrister-at-Law. 1859–1862.

The manuscript of the *Liber Albus*, compiled by John Carpenter, Common Clerk of the City of London in the year 1419, a large folio volume, is preserved in the Record Room of the City of London. It gives an account of the laws, regulations, and institutions of that City in the twelfth, thirteenth, fourteenth, and early part of the fifteenth centuries.

The *Liber Custumarum* was compiled probably by various hands in the early part of the fourteenth century during the reign of Edward II. The manuscript, a folio volume, is also preserved in the Record Room of the City of London, though some portion in its original state, borrowed from the City in the reign of Queen Elizabeth and never returned, forms part of the Cottonian MS. Claudius D. II. in the British Museum. It also gives an account of the laws, regulations, and institutions of the City of London in the twelfth, thirteenth, and early part of the fourteenth centuries.

13. **CHRONICA JOHANNIS DE OXENEDES.** *Edited by* Sir HENRY ELLIS, K.H. 1859.

Although this Chronicle tells of the arrival of Hengist and Horsa in England in the year 449, yet it substantially begins with the reign of King Alfred, and comes down to the year 1292, where it ends abruptly. The history is particularly valuable for notices of events in the eastern portions of the kingdom, which are not to be elsewhere obtained, and some curious facts are mentioned relative to the floods in that part of England, which are confirmed in the Friesland Chronicle of Anthony Heinrich, pastor of the Island of Mohr.

14. **A COLLECTION OF POLITICAL POEMS AND SONGS RELATING TO ENGLISH HISTORY, FROM THE ACCESSION OF EDWARD III. TO THE REIGN OF HENRY VIII.** Vols. I. and II. *Edited by* THOMAS WRIGHT, Esq., M.A. 1859–1861.

These Poems are perhaps the most interesting of all the historical writings of the period, though they cannot be relied on for accuracy of statement. They are various in character; some are upon religious subjects, some may be called satires, and some give no more than a court scandal; but as a whole they present a very fair picture of society, and of the relations of the different classes to one another. The period comprised is in itself interesting, and brings us, through the decline of the feudal system, to the beginning of our modern history. The songs in old English are of considerable value to the philologist.

15. **THE "OPUS TERTIUM," "OPUS MINUS," &c., of ROGER BACON.** *Edited by* J. S. BREWER, M.A., Professor of English Literature, King's College, London. 1859.

This is the celebrated treatise—never before printed—so frequently referred to by the great philosopher in his works. It contains the fullest details we possess of the life and labours of Roger Bacon: also a fragment by the same author, supposed to be unique, the "*Compendium Studii Theologiae*."

16. **BARTHOLOMÆI DE COTTON, MONACHI NORWICENSIS, HISTORIA ANGELICANA; 449–1298: necnon ejusdem Liber de Archiepiscopis et Episcopis Angliæ.** *Edited by* HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge. 1859.

The author, a monk of Norwich, has here given us a Chronicle of England from the arrival of the Saxons in 449 to the year 1298, in or about which year it appears that he died. The latter portion of this history (the whole of the reign of Edward I. more especially) is of great value, as the writer was contemporary with the events which he records. An Appendix contains several illustrative documents connected with the previous narrative.

17. **BRUT Y TYWYSGOGION ; or, The Chronicle of the Princes of Wales.** *Edited by the Rev. JOHN WILLIAMS AB ITHEL, M.A.* 1860.

This work, also known as "The Chronicle of the Princes of Wales," has been attributed to Caradoc of Llancarvan, who flourished about the middle of the twelfth century. It is written in the ancient Welsh language, begins with the abdication and death of Caedwala at Rome, in the year 681, and continues the history down to the subjugation of Wales by Edward I., about the year 1282.

18. **A COLLECTION OF ROYAL AND HISTORICAL LETTERS DURING THE REIGN OF HENRY IV. 1399-1404.** *Edited by the Rev. F. C. HINGESTON, M.A., of Exeter College, Oxford.* 1860.

This volume, like all the others in the series containing a miscellaneous selection of letters, is valuable on account of the light it throws upon biographical history, and the familiar view it presents of characters, manners, and events. The period requires much elucidation; to which it will materially contribute.

19. **THE REPRESSOR OF OVER MUCH BLAMING OF THE CLERGY.** By REGINALD PECOCK, sometime Bishop of Chichester. Vols. I. and II. *Edited by CHURCHILL BABINGTON, B.D., Fellow of St. John's College, Cambridge.* 1860.

The "Repressor" may be considered the earliest piece of good theological disquisition of which our English prose literature can boast. The author was born about the end of the fourteenth century, consecrated Bishop of St. Asaph in the year 1444, and translated to the see of Chichester in 1450. While Bishop of St. Asaph, he zealously defended his brother prelates from the attacks of those who censured the bishops for their neglect of duty. He maintained that it was no part of a bishop's functions to appear in the pulpit, and that his time might be more profitably spent, and his dignity better maintained, in the performance of works of a higher character. Among those who thought differently were the Lollards, and against their general doctrines the "Repressor" is directed. Pecock took up a position midway between that of the Roman Church and that of the modern Anglican Church; but his work is interesting chiefly because it gives a full account of the views of the Lollards and of the arguments by which they were supported, and because it assists us to ascertain the state of feeling which ultimately led to the Reformation. Apart from religious matters, the light thrown upon contemporaneous history is very small, but the "Repressor" has great value for the philologist, as it tells us what were the characteristics of the language in use among the cultivated Englishmen of the fifteenth century. Pecock, though an opponent of the Lollards, showed a certain spirit of toleration, for which he received, towards the end of his life, the usual mediæval reward—persecution.

20. **ANNALES CAMBRIÆ.** *Edited by the Rev. JOHN WILLIAMS AB ITHEL, M.A.* 1860.

These annals, which are in Latin, commence in the year 447, and come down to the year 1288. The earlier portion appears to be taken from an Irish Chronicle, which was also used by Tigernach, and by the compiler of the Annals of Ulster. During its first century it contains scarcely anything relating to Britain, the earliest direct concurrence with English history is relative to the mission of Augustine. Its notices throughout, though brief, are valuable. The annals were probably written at St. Davids, by Blegewryd, Archdeacon of Llandaff, the most learned man in his day in all Cymru.

21. **THE WORKS OF GIRALDUS CAMBRENSIS.** Vols. I., II., III., and IV. *Edited by J. S. BREWER, M.A., Professor of English Literature, King's College, London.* Vols. V., VI., and VII. *Edited by the Rev. JAMES F. DIMOCK, M.A., Rector of Barnburgh, Yorkshire.* 1861-1877.

These volumes contain the historical works of Gerald du Barry, who lived in the reigns of Henry II., Richard I., and John, and attempted to re-establish the independence of Wales by restoring the see of St. Davids to its ancient primacy. His works are of a very miscellaneous nature, both in prose and verse, and are remarkable chiefly for the racy and original anecdotes which they contain relating to contemporaries. He is the only Welsh writer of any importance who has contributed so much to the mediæval literature of this country, or assumed, in consequence of his nationality, so free and independent a tone. His frequent travels in Italy, in France, in Ireland, and in Wales, gave him opportunities for observation which did not generally fall to the lot of mediæval writers in the twelfth and thirteenth centuries, and of these observations Giraldus has made due use. Only extracts from these treatises have been printed before, and almost all of them are taken from unique manuscripts.

The *Topographia Hibernica* (in Vol. V.) is the result of Giraldus' two visits to Ireland. The first in the year 1183, the second in 1185-6, when he accompanied Prince John into that country. Curious as this treatise is, Mr. Dimock is of opinion that it ought not to be accepted as sober truthful history, for Giraldus himself states that truth was not his main object, and that he compiled the work for the purpose of sounding the praises of Henry the Second. Elsewhere, however, he declares that he had stated nothing in the *Topographia* of the truth of which he was not well assured, either by his own eyesight or by the testimony, with all diligence elicited, of the most trustworthy and authentic men in the country; that though he did not put just the same full faith in their reports as in what he had himself seen, yet, as they only related what they had themselves seen, he could not but believe such credible witnesses. A very interesting portion of this treatise is devoted to the animals of Ireland. It shows that he was a very accurate and acute observer, and his descriptions are given in a way that a scientific naturalist of the present day could hardly improve upon. The *Expugnatio Hibernica* was written about the year 1188 and may be regarded rather as a great epic than a sober relation of acts occurring in his own days. No one can peruse it without coming to the conclusion that it is rather a poetical fiction than a prosaic truthful history.

Vol. VI. contains the *Itinerarium Cambriæ et Descriptio Cambriæ*: and Vol. VII., the lives of S. Remigius and S. Hugh.

22. **LETTERS AND PAPERS ILLUSTRATIVE OF THE WARS OF THE ENGLISH IN FRANCE DURING THE REIGN OF HENRY THE SIXTH, KING OF ENGLAND.** Vol. I., and Vol. II. (in Two Parts). *Edited by* the Rev. JOSEPH STEVENSON, M.A., of University College, Durham, and Vicar of Leighton Buzzard. 1861-1864.

The letters and papers contained in these volumes are derived chiefly from originals or contemporary copies extant in the Bibliothèque Impériale, and the Dépôt des Archives, in Paris. They illustrate the line of policy adopted by John Duke of Bedford and his successors during their government of Normandy, and such other provinces of France as had been acquired by Henry V. We may here trace, step by step, the gradual declension of the English power, until we are prepared to read of its final overthrow.

23. **THE ANGLO-SAXON CHRONICLE, ACCORDING TO THE SEVERAL ORIGINAL AUTHORITIES.** Vol. I., Original Texts. Vol. II., Translation. *Edited and translated by* BENJAMIN THORPE, Esq., Member of the Royal Academy of Sciences at Munich, and of the Society of Netherlandish Literature at Leyden. 1861.

This Chronicle, extending from the earliest history of Britain to the year 1154, is justly the boast of England; for no other nation can produce any history, written in its own vernacular, at all approaching it, either in antiquity, truthfulness, or extent, the historical books of the Bible alone excepted. There are at present six independent manuscripts of the Saxon Chronicle, ending in different years, and written in different parts of the country. In this edition, the text of each manuscript is printed in columns on the same page, so that the student may see at a glance the various changes which occur in orthography, whether arising from locality or age.

24. **LETTERS AND PAPERS ILLUSTRATIVE OF THE REIGNS OF RICHARD III. AND HENRY VII.** Vols. I. and II. *Edited by* JAMES GAIRDNER, Esq. 1861-1863.

The Papers are derived from MSS. in the Public Record Office, the British Museum, and other repositories. The period to which they refer is unusually destitute of chronicles and other sources of historical information, so that the light obtained from these documents is of special importance. The principal contents of the volumes are some diplomatic Papers of Richard III.; correspondence between Henry VII. and Ferdinand and Isabella of Spain; documents relating to Edmund de la Pole, Earl of Suffolk; and a portion of the correspondence of James IV. of Scotland.

25. **LETTERS OF BISHOP GROSSETESTE**, illustrative of the Social Condition of his Time. *Edited by* HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, Cambridge. 1861.

The Letters of Robert Grosseteste (131 in number) are here collected from various sources, and a large portion of them is printed for the first time. They range in date from about 1210 to 1253, and relate to various matters connected not only with the political history of England during the reign of Henry III., but with its ecclesiastical condition. They refer especially to the diocese of Lincoln, of which Grosseteste was bishop.

26. **DESCRIPTIVE CATALOGUE OF MANUSCRIPTS RELATING TO THE HISTORY OF GREAT BRITAIN AND IRELAND.** Vol. I. (in Two Parts); Anterior to the Norman Invasion. Vol. II.; 1066–1200. Vol. III.; 1200–1327. *By* Sir THOMAS DUFFUS HARDY, D.C.L., Deputy Keeper of the Public Records. 1862–1871.

The object of this work is to publish notices of all known sources of British history, both printed and unprinted, in one continued sequence. The materials, when historical (as distinguished from biographical), are arranged under the year in which the latest event is recorded in the chronicle or history, and not under the period in which its author, real or supposed, flourished. Biographies are enumerated under the year in which the person commemorated died, and not under the year in which the life was written. This arrangement has two advantages; the materials for any given period may be seen at a glance; and if the reader knows the time when an author wrote, and the number of years that had elapsed between the date of the events and the time the writer flourished, he will generally be enabled to form a fair estimate of the comparative value of the narrative itself. A brief analysis of each work has been added when deserving it, in which the original portions are distinguished from those which are mere compilations. When possible, the sources are indicated from which such compilations have been derived. A biographical sketch of the author of each piece has been added, and a brief notice has also been given of such British authors as have written on historical subjects.

27. **ROYAL AND OTHER HISTORICAL LETTERS ILLUSTRATIVE OF THE REIGN OF HENRY III.** Vol. I., 1216–1235. Vol. II., 1236–1272. *Selected and edited by* the Rev. W. W. SHIRLEY, D.D., Regius Professor in Ecclesiastical History, and Canon of Christ Church, Oxford. 1862–1866.

The letters contained in these volumes are derived chiefly from the ancient correspondence formerly in the Tower of London, and now in the Public Record Office. They illustrate the political history of England during the growth of its liberties, and throw considerable light upon the personal history of Simon de Montfort. The affairs of France form the subject of many of them, especially in regard to the province of Gascony. The entire collection consists of nearly 700 documents, the greater portion of which is printed for the first time.

28. **CHRONICA MONASTERII S. ALBANI.**—1. THOMÆ WALSHINGHAM HISTORIA ANGLICANA; Vol. I., 1272–1381: Vol. II., 1381–1422. 2. WILLELMI RISHANGER CHRONICA ET ANNALES, 1259–1307. 3. JOHANNIS DE TROKELowe ET HENRICI DE BLANEFORDE CHRONICA ET ANNALES, 1259–1296; 1307–1324; 1392–1406. 4. GESTA ABBATUM MONASTERII S. ALBANI, A THOMÆ WALSHINGHAM, REGNANTE RICARDO SECUNDO, EJUSDEM ECCLESIE PRÆCENTORE, COMPILATA; Vol. I., 793–1290: Vol. II., 1290–1349: Vol. III., 1349–1411. 5. JOHANNIS AMUNDESHAM, MONACHI MONASTERII S. ALBANI, UT VIDETUR, ANNALES; Vols. I.

and II. 6. REGISTRA QUORUNDAM ABBATUM MONASTERII S. ALBANI, QUI SÆCULO XV^{mo} FLORUERE; Vol. I., REGISTRUM ABBATIS JOHANNIS WHETHAMSTEDE, ABBATIS MONASTERII SANCTI ALBANI, ITERUM SUSCEPTÆ; ROBERTO BLAKENEY, CAPELLANO, QUONDAM ADSRIPTUM: Vol. II., REGISTRA JOHANNIS WHETHAMSTEDE, WILLELMI ALBON, ET WILLELMI WALINGFORDE, ABBATUM MONASTERII SANCTI ALBANI, CUM APPENDICE, CONTINENTE QUASDAM EPISTOLAS, A JOHANNE WHETHAMSTEDE CONSCRIPTAS. 7. YPODIGMA NEUSTRIÆ, A THOMA WALSINGHAM, QUONDAM MONACHO MONASTERII S. ALBANI, CONSCRIPTUM. *Edited by* HENRY THOMAS RILEY, Esq., M.A., Cambridge and Oxford; and of the Inner Temple, Barrister-at-Law. 1863-1876.

In the first two volumes is a History of England, from the death of Henry III. to the death of Henry V., by Thomas Walsingham, Precentor of St. Albans, from MS. VII. in the Arundel Collection in the College of Arms, London, a manuscript of the fifteenth century, collated with MS. 13 E. IX. in the King's Library in the British Museum, and MS. VII. in the Parker Collection of Manuscripts at Corpus Christi College, Cambridge.

In the third volume is a Chronicle of English History, attributed to William Rishanger, who lived in the reign of Edward I., from the Cotton. MS. Faustina B. IX. in the British Museum, collated with MS. 14 C. VII. (fols. 219-231) in the King's Library, British Museum, and the Cotton MS. Claudius E. III., fols. 306-331: an account of transactions attending the award of the kingdom of Scotland to John Balliol, 1291-1292, from MS. Cotton. Claudius D. VI., also attributed to William Rishanger, but on no sufficient ground: a short Chronicle of English History, 1293 to 1300, by an unknown hand, from MS. Cotton. Claudius D. VI.: a short Chronicle Willelmi Rishanger Gesta Edwardi Primi, Regis Angliæ, from MS. 14 C. I. in the Royal Library, and MS. Cotton. Claudius D. VI., with Annales Regum Angliæ, probably by the same hand: and fragments of three Chronicles of English History, 1285 to 1307.

In the fourth volume is a Chronicle of English History, 1259 to 1296, from MS. Cotton. Claudius D. VI.: Annals of Edward II., 1307 to 1323, by John de Trokelowe, a monk of St. Albans, and a continuation of Trokelowe's Annals, 1323, 1324, by Henry de Blaneforme, both from MS. Cotton. Claudius D. VI.: a full Chronicle of English History, 1392 to 1406, from MS. VII. in the Library of Corpus Christi College, Cambridge; and an account of the Benefactors of St. Albans, written in the early part of the fifteenth century, from MS. VI. in the same Library.

The fifth, sixth, and seventh volumes contain a history of the Abbots of St. Albans, 793 to 1411, mainly compiled by Thomas Walsingham, from MS. Cotton. Claudius E. IV., in the British Museum: with a Continuation, from the closing pages of Parker MS. VII., in the Library of Corpus Christi College, Cambridge.

The eighth and ninth volumes, in continuation of the Annals, contain a Chronicle, probably by John Amundesham, a monk of St. Albans.

The tenth and eleventh volumes relate especially to the acts and proceedings of Abbots Whethamstede, Albon, and Wallingford, and may be considered as a memorial of the chief historical and domestic events during those periods.

The twelfth volume contains a compendious History of England to the reign of Henry V., and of Normandy in early times, also by Thomas Walsingham, and dedicated to Henry V. The compiler has often substituted other authorities in place of those consulted in the preparation of his larger work.

29. CHRONICON ABBATIS EYESHAMENSIS, AUCTORIBUS DOMINICO PRIORE EYESHAMIS ET THOMA DE MARLEBERGE ABBATE, A FUNDATIONE AD ANNUM 1213, UNA CUM CONTINUATIONE AD ANNUM 1418. *Edited by* the Rev. W. D. MACRAY, M.A., Bodleian Library, Oxford. 1863.

The Chronicle of Evesham illustrates the history of that important monastery from its foundation by Egwin, about 690, to the year 1418. Its chief feature is an autobiography, which makes us acquainted with the inner daily life of a great abbey, such as but rarely has been recorded. Interspersed are many notices of general, personal, and local history which will be read with much interest. This work exists in a single MS., and is for the first time printed.

30. **RICARDI DE CIRENCESTRIA SPECULUM HISTORIALE DE GESTIS REGUM ANGLIÆ.** Vol. I., 447-871. Vol. II., 872-1066. *Edited by* JOHN E. B. MAYOR, M.A., Fellow of St. John's College, Cambridge. 1863-1869.

The compiler, Richard of Cirencester, was a monk of Westminster, 1355-1400. In 1391 he obtained a licence to make a pilgrimage to Rome. His history, in four books, extends from 447 to 1066. He announces his intention of continuing it, but there is no evidence that he completed any more. This chronicle gives many charters in favour of Westminster Abbey, and a very full account of the lives and miracles of the saints, especially of Edward the Confessor, whose reign occupies the fourth book. A treatise on the Coronation, by William of Sudbury, a monk of Westminster, fills book iii. c. 3. It was on this author that C. J. Bertram fathered his forgery, *De Situ Britannia*, in 1747.

31. **YEAR BOOKS OF THE REIGN OF EDWARD THE FIRST.** Years 20-21, 21-22, 30-31, 32-33, and 33-35. *Edited and translated by* ALFRED JOHN HORWOOD, Esq., of the Middle Temple, Barrister-at-Law. 1863-1879.

The volumes known as the "Year Books" contain reports in Norman-French of cases argued and decided in the Courts of Common Law. They may be considered to a great extent as the "lex non scripta" of England, and have been held in the highest veneration by the ancient sages of the law, and were received by them as the repositories of the first recorded judgments and dicta of the great legal luminaries of past ages. They are also worthy of the attention of the general reader on account of the historical information and the notices of public and private persons which they contain, as well as the light which they throw on ancient manners and customs.

32. **NARRATIVES OF THE EXPULSION OF THE ENGLISH FROM NORMANDY, 1449-1450.**—Robertus Blondelli de Reductione Normanniæ: Le Recouvrement de Normandie, par Berry, Héraut du Roy: Conférences between the Ambassadors of France and England. *Edited, from MSS. in the Imperial Library at Paris, by* the Rev. JOSEPH STEVENSON, M.A., of University College, Durham. 1863.

This volume contains the narrative of an eye-witness who details with considerable power and minuteness the circumstances which attended the final expulsion of the English from Normandy in the year 1450. The history commences with the infringement of the truce by the capture of Fougères, and ends with the battle of Formigny and the embarkation of the Duke of Somerset. The whole period embraced is less than two years.

33. **HISTORIA ET CARTULARIUM MONASTERII S. PETRI GLOUCESTRIÆ.** Vols. I., II., and III. *Edited by* W. H. HART, Esq., F.S.A., Membre correspondant de la Société des Antiquaires de Normandie. 1863-1867.

This work consists of two parts, the History and the Cartulary of the Monastery of St. Peter, Gloucester. The history furnishes an account of the monastery from its foundation, in the year 681, to the early part of the reign of Richard II., together with a calendar of donations and benefactions. It treats principally of the affairs of the monastery, but occasionally matters of general history are introduced. Its authorship has generally been assigned to Walter Froucester, the twentieth abbot, but without any foundation.

34. **ALEXANDRI NECKAM DE NATURIS RERUM LIBRI DUO ; with NECKAM'S POEM, DE LAUDIBUS DIVINÆ SAPIENTIÆ.** *Edited by* THOMAS WRIGHT, Esq., M.A. 1863.

Neckam was a man who devoted himself to science, such as it was in the twelfth century. In the "De Naturis Rerum" are to be found what may be called the rudiments of many sciences mixed up with much error and ignorance. Neckam was not thought infallible, even by his contemporaries, for Roger Bacon remarks of him, "this Alexander in many things wrote what was true and useful ; but he neither can nor ought by just title to be reckoned among authorities." Neckam, however, had sufficient independence of thought to differ from some of the schoolmen who in his time considered themselves the only judges of literature. He had his own views in morals, and in giving us a glimpse of them, as well as of his other opinions, he throws much light upon the manners, customs, and general tone of thought prevalent in the twelfth century. The poem entitled "De Laudibus Divinæ Sapientiæ" appears to be a metrical paraphrase or abridgment of the "De Naturis Rerum." It is written in the elegiac metre ;

and though there are many lines which violate classical rules, it is, as a whole, above the ordinary standard of mediæval Latin.

35. **LEECHDOMS, WORTCUNNING, AND STARCRAFT OF EARLY ENGLAND**; being a Collection of Documents illustrating the History of Science in this Country before the Norman Conquest. Vols. I., II., and III. *Collected and edited by* the Rev. T. OSWALD COCKAYNE, M.A., of St. John's College, Cambridge. 1864-1866.

This work illustrates not only the history of science, but the history of superstition. In addition to the information bearing directly upon the medical skill and medical faith of the times, there are many passages which incidentally throw light upon the general mode of life and ordinary diet. The volumes are interesting not only in their scientific, but also in their social aspect. The manuscripts from which they have been printed are valuable to the Anglo-Saxon scholar for the illustrations they afford of Anglo-Saxon orthography.

36. **ANNALES MONASTICI**. Vol. I.:—*Annales de Margan*, 1066-1232; *Annales de Theokesberia*, 1066-1263; *Annales de Buiton*, 1004-1263. Vol. II.:—*Annales Monasterii de Wintonia*, 519-1277; *Annales Monasterii de Waverleia*, 1-1291. Vol. III.:—*Annales Prioratus de Dunstaplia*, 1-1297. *Annales Monasterii de Bermundeseia*, 1042-1432. Vol. IV.:—*Annales Monasterii de Osenseia*, 1016-1347; *Chronicon vulgo dictum Chronicon Thomæ Wykes*, 1066-1289; *Annales Prioratus de Wigornia*, 1-1377. Vol. V.:—*Index and Glossary*. *Edited by* HENRY RICHARDS LUARD, M.A., Fellow and Assistant Tutor of Trinity College, and Registry of the University, Cambridge. 1864-1869.

The present collection of Monastic Annals embraces all the more important chronicles compiled in religious houses in England during the thirteenth century. These distinct works are ten in number. The extreme period which they embrace ranges from the year 1 to 1432, although they refer more especially to the reigns of John, Henry III., and Edward I. Some of these narratives have already appeared in print, but others are printed for the first time.

37. **MAGNA VITA S. HUGONIS EPISCOPI LINCOLNIENSIS**. From Manuscripts in the Bodleian Library, Oxford, and the Imperial Library, Paris. *Edited by* the Rev. JAMES F. DIMOCK, M.A., Rector of Barnbury, Yorkshire. 1864.

This work contains a number of very curious and interesting incidents, and being the work of a contemporary, is very valuable, not only as a truthful biography of a celebrated ecclesiastic, but as the work of a man, who, from personal knowledge, gives notices of passing events, as well as of individuals who were then taking active part in public affairs. The author, in all probability, was Adam Abbot of Evesham. He was domestic chaplain and private confessor of Bishop Hugh, and in these capacities was admitted to the closest intimacy. Bishop Hugh was Prior of Witham for 11 years before he became Bishop of Lincoln. His consecration took place on the 21st September 1186; he died on the 16th of November 1200; and was canonized in 1220.

38. **CHRONICLES AND MEMORIALS OF THE REIGN OF RICHARD THE FIRST**. Vol. I.:—*ITINERARIUM PEREGRINORUM ET GESTA REGIS RICARDI*. Vol. II.:—*EPISTOLÆ CANTUARIENSES*; the Letters of the Prior and Convent of Christ Church, Canterbury; 1187 to 1199. *Edited by* WILLIAM STUBBS, M.A., Vicar of Navestock, Essex, and Lambeth Librarian. 1864-1865.

The authorship of the Chronicle in Vol. I., hitherto ascribed to Geoffrey Vinesauf, is now more correctly ascribed to Richard, Canon of the Holy Trinity of London. The narrative extends from 1187 to 1199; but its chief interest consists in the minute and authentic narrative which it furnishes of the exploits of Richard I., from his departure from England in December 1189 to his death in 1199. The author states in his prologue that he was an eye-witness of much that he records; and various incidental circumstances which occur in the course of the narrative confirm this assertion.

The letters in Vol. II., written between 1187 and 1199, are of value as furnishing authentic materials for the history of the ecclesiastical condition of England during the reign of Richard I. They had their origin in a dispute which arose from the attempts of Baldwin and Hubert, archbishops of Canterbury, to

found a college of secular canons, a project which gave great umbrage to the monks of Canterbury, who saw in it a design to supplant them in their function of metropolitan chapter. These letters are printed, for the first time, from a MS. belonging to the archiepiscopal library at Lambeth.

39. **RECUEIL DES CRONIQUEES ET ANCHIEENNES ISTORIES DE LA GRANT BRE-TAIGNE A PRESENT NOMME ENGLETERRE**, par JEHAN DE WAURIN. Vol. I. Albina to 688. Vol. II., 1399-1422. Vol. III., 1422-1431. *Edited by* WILLIAM HARDY, Esq., F.S.A. 1864-1879.

40. **A COLLECTION OF THE CHRONICLES AND ANCIENT HISTORIES OF GREAT BRITAIN, NOW CALLED ENGLAND**, by JOHN DE WAURIN. Albina to 688. (Translation of the preceding Vol. I.) *Edited and translated by* WILLIAM HARDY, Esq., F.S.A. 1864.

This curious chronicle extends from the fabulous period of history down to the return of Edward IV. to England in the year 1471 after the second deposition of Henry VI. The manuscript from which the text of the work is taken is preserved in the Imperial Library at Paris, and is believed to be the only complete and nearly contemporary copy in existence. The work, as originally bound, was comprised in six volumes, since rebound in morocco in 12 volumes, folio maximo, vellum, and is illustrated with exquisite miniatures, vignettes, and initial letters. It was written towards the end of the fifteenth century, having been expressly executed for Louis de Bruges, Seigneur de la Gruthuyse and Earl of Winchester, from whose cabinet it passed into the library of Louis XII. at Blois.

41. **POLYCHRONICON RANULPHI HIGDEN**, with Trevisa's Translation. Vols. I. and II. *Edited by* CHURCHILL BABINGTON, B.D., Senior Fellow of St. John's College, Cambridge. Vols. III., IV., V., VI., and VII. *Edited by* the Rev. JOSEPH RAWSON LUMBY, D.D., Norrisian Professor of Divinity, Vicar of St. Edward's, Fellow of St. Catharine's College, and late Fellow of Magdalene College, Cambridge. 1865-1879.

This is one of the many mediæval chronicles which assume the character of a history of the world. It begins with the creation, and is brought down to the author's own time, the reign of Edward III. Prefixed to the historical portion, is a chapter devoted to geography, in which is given a description of every known land. To say that the Polychronicon was written in the fourteenth century is to say that it is not free from inaccuracies. It has, however, a value apart from its intrinsic merits. It enables us to form a very fair estimate of the knowledge of history and geography which well-informed readers of the fourteenth and fifteenth centuries possessed, for it was then the standard work on general history.

The two English translations, which are printed with the original Latin, afford interesting illustrations of the gradual change of our language, for one was made in the fourteenth century, the other in the fifteenth. The differences between Trevisa's version and that of the unknown writer are often considerable.

42. **LE LIVRE DE REIS DE BRITTANIE E LE LIVRE DE REIS DE ENGLETERE**. *Edited by* JOHN GLOVER, M.A., Vicar of Brading, Isle of Wight, formerly Librarian of Trinity College, Cambridge. 1865.

These two treatises, though they cannot rank as independent narratives, are nevertheless valuable as careful abstracts of previous historians, especially "Le Livre de Reis de Engleterre." Some various readings are given which are interesting to the philologist as instances of semi-Saxonized French.

It is supposed that Peter of Ickham must have been the author, but no certain conclusion on that point has been arrived at.

43. **CHRONICA MONASTERII DE MELSA, AB ANNO 1150 USQUE AD ANNUM 1406**. Vols. I., II., and III. *Edited by* EDWARD AUGUSTUS BOND, Esq., Assistant Keeper of the Manuscripts, and Egerton Librarian, British Museum. 1866-1868.

The Abbey of Meaux was a Cistercian house, and the work of its abbot is both curious and valuable. It is a faithful and often minute record of the establishment of a religious community, of its progress in forming an ample revenue, of its struggles to maintain its acquisitions, and of its relations to the governing institutions of the country. In addition to the private affairs of the monastery, some light is thrown upon the public events of the time, which are however kept distinct, and appear at the end of the history of each abbot's administration. The text has been printed from what is said to be the autograph of the original compiler, Thomas de Burton, the nineteenth abbot.

44. **MATTHÆI PARISIENSIS HISTORIA ANGLORUM, SIVE, UT VULGO DICITUR, HISTORIA MINOR.** Vols. I., II., and III. 1067–1253. *Edited by Sir FREDERIC MADDEN, K.H., Keeper of the Department of Manuscripts, British Museum.* 1866–1869.

The exact date at which this work was written is, according to the chronicler, 1250. The history is of considerable value as an illustration of the period during which the author lived, and contains a good summary of the events which followed the Conquest. This minor chronicle is, however, based on another work (also written by Matthew Paris) giving fuller details, which has been called the "Historia Major." The chronicle here published, nevertheless, gives some information not to be found in the greater history.

45. **LIBER MONASTERII DE HYDA: A CHRONICLE AND CHARTULARY OF HYDE ABBEY, WINCHESTER, 455–1023.** *Edited, from a Manuscript in the Library of the Earl of Macclesfield, by EDWARD EDWARDS, Esq.* 1866.

The "Book of Hyde" is a compilation from much earlier sources which are usually indicated with considerable care and precision. In many cases, however, the Hyde chronicler appears to correct, to qualify, or to amplify—either from tradition or from sources of information not now discoverable—the statements, which, in substance, he adopts. He also mentions, and frequently quotes from writers whose works are either entirely lost or at present known only by fragments.

There is to be found, in the "Book of Hyde," much information relating to the reign of King Alfred which is not known to exist elsewhere. The volume contains some curious specimens of Anglo-Saxon and Mediæval English.

46. **CHRONICON SCOTORUM: A CHRONICLE OF IRISH AFFAIRS, from the EARLIEST TIMES to 1135; with a SUPPLEMENT, containing the Events from 1141 to 1150.** *Edited, with a Translation, by WILLIAM MAUNSELL HENNESSY, Esq., M.R.I.A.* 1866.

There is, in this volume, a legendary account of the peopling of Ireland and of the adventures which befell the various heroes who are said to have been connected with Irish history. The details are, however, very meagre both for this period and for the time when history becomes more authentic. The plan adopted in the chronicle gives the appearance of an accuracy to which the earlier portions of the work cannot have any claim. The succession of events is marked, year by year, from A.M. 1599 to A.D. 1150. The principal events narrated in the later portion of the work are, the invasions of foreigners, and the wars of the Irish among themselves. The text has been printed from a MS. preserved in the library of Trinity College, Dublin, written partly in Latin, partly in Irish.

47. **THE CHRONICLE OF PIERRE DE LANGTOFT, IN FRENCH VERSE, FROM THE EARLIEST PERIOD TO THE DEATH OF EDWARD I.** Vols. I. and II. *Edited by THOMAS WRIGHT, Esq., M.A.* 1866–1868.

It is probable that Pierre de Langtoft was a canon of Bridlington, in Yorkshire, and that he lived in the reign of Edward I., and during a portion of the reign of Edward II. This chronicle is divided into three parts; in the first is an abridgment of Geoffrey of Monmouth's "Historia Britonum," in the second, a history of the Anglo-Saxon and Norman kings, down to the death of Henry III., and in the third a history of the reign of Edward I. The principal object of the work was apparently to show the justice of Edward's Scottish wars. The language is singularly corrupt, and a curious specimen of the French of Yorkshire.

48. **THE WAR OF THE GAEDHIL WITH THE GAILL, OR, THE INVASIONS OF IRELAND BY THE DANES AND OTHER NORSEMEN.** *Edited, with a Translation, by JAMES HENTHORN TODD, D.D., Senior Fellow of Trinity College, and Regius Professor of Hebrew in the University, Dublin.* 1867.

The work in its present form, in the editor's opinion, is a comparatively modern version of an undoubtedly ancient original. That it was compiled from contemporary materials has been proved by curious incidental evidence. It is stated in the account given of the battle of Clontarf that the full tide in Dublin Bay on the day of the battle (23 April 1014) coincided with sunrise; and that the returning tide in the evening aided considerably in the defeat of the Danes. The fact has been verified by astronomical calculations, and the inference is that the author of the chronicle, if not himself an eye-witness, must have derived his information from those who were eye-witnesses. The contents of the work are sufficiently described in its title. The story is told after the manner of the Scandinavian Sagas, with poems and fragments of poems introduced into the prose narrative.

49. **GESTA REGIS HENRICI SECUNDI BENEDICTI ABBATIS. THE CHRONICLE OF THE REIGNS OF HENRY II. AND RICHARD I., 1169-1192**, known under the name of **BENEDICT OF PETERBOROUGH**. Vols. I. and II. *Edited by WILLIAM STUBBS, M.A.,* Regius Professor of Modern History, Oxford, and Lambeth Librarian. 1867.

This chronicle of the reigns of Henry II. and Richard I., known commonly under the name of Benedict of Peterborough, is one of the best existing specimens of a class of historical compositions of the first importance to the student.

50. **MUNIMENTA ACADEMICA, OR, DOCUMENTS ILLUSTRATIVE OF ACADEMICAL LIFE AND STUDIES AT OXFORD** (in Two Parts). *Edited by the Rev. HENRY ANSTEY, M.A.,* Vicar of St. Wendron, Cornwall, and lately Vice-Principal of St. Mary Hall, Oxford. 1868.

This work will supply materials for a History of Academic Life and Studies in the University of Oxford during the 13th, 14th, and 15th centuries.

51. **CHRONICA MAGISTRI ROGERI DE HOVEDENE**. Vols. I., II., III., and IV. *Edited by WILLIAM STUBBS, M.A.,* Regius Professor of Modern History, and Fellow of Oriel College, Oxford. 1868-1871.

This work has long been justly celebrated, but not thoroughly understood until Mr. Stubbs' edition. The earlier portion, extending from 732 to 1148, appears to be a copy of a compilation made in Northumbria about 1161, to which Hoveden added little. From 1148 to 1169—a very valuable portion of this work—the matter is derived from another source, to which Hoveden appears to have supplied little, and not always judiciously. From 1170 to 1192 is the portion which corresponds with the Chronicle known under the name of Benedict of Peterborough (*see* No. 49); but it is not a copy, being sometimes an abridgment, at others a paraphrase; occasionally the two works entirely agree; showing that both writers had access to the same materials, but dealt with them differently. From 1192 to 1201 may be said to be wholly Hoveden's work: it is extremely valuable, and an authority of the first importance.

52. **WILLELMI MALMESBIRIENSIS MONACHI DE GESTIS PONTIFICUM ANGLORUM LIBRI QUINQUE**. *Edited, from William of Malmesbury's Autograph MS., by N. E. S. A. HAMILTON, Esq.,* of the Department of Manuscripts, British Museum. 1870.

William of Malmesbury's "*Gesta Pontificum*" is the principal foundation of English Ecclesiastical Biography, down to the year 1122. The manuscript which has been followed in this Edition is supposed by Mr. Hamilton to be the author's autograph, containing his latest additions and amendments.

53. **HISTORIC AND MUNICIPAL DOCUMENTS OF IRELAND, FROM THE ARCHIVES OF THE CITY OF DUBLIN, &c. 1172-1320**. *Edited by JOHN T. GILBERT, Esq., F.S.A.,* Secretary of the Public Record Office of Ireland. 1870.

A collection of original documents, elucidating mainly the history and condition of the municipal, middle, and trading classes under or in relation with the rule of England in Ireland,—a subject hitherto in almost total obscurity. Extending over the first hundred and fifty years of the Anglo-Norman settlement, the series includes charters, municipal laws and regulations, rolls of names of citizens and members of merchant-guilds, lists of commodities with their rates, correspondence, illustrations of relations between ecclesiastics and laity; together with many documents exhibiting the state of Ireland during the presence there of the Scots under Robert and Edward Bruce.

54. **THE ANNALS OF LOCH CÉ. A CHRONICLE OF IRISH AFFAIRS, FROM 1014 to 1590**. Vols. I. and II. *Edited, with a Translation, by WILLIAM MAUNSELL HENNESSY, Esq., M.R.I.A.* 1871.

The original of this chronicle has passed under various names. The title of "*Annals of Loch Cé*" was given to it by Professor O'Curry, on the ground that it was transcribed for Brian Mac Dermot, an Irish chieftain, who resided on the island in Loch Cé, in the county of Roscommon. It adds much to the materials for the civil and ecclesiastical history of Ireland; and contains many curious references to English and foreign affairs, not noticed in any other chronicle.

55. **MONUMENTA JURIDICA. THE BLACK BOOK OF THE ADMIRALTY, WITH APPENDICES.** Vols. I., II., III., and IV. *Edited by* SIR TRAVERS TWISS, Q.C., D.C.L. 1871-1876.

This book contains the ancient ordinances and laws relating to the navy, and was probably compiled for the use of the Lord High Admiral of England. Selden calls it the "jewel of the Admiralty Records." Prynne ascribes to the Black Book the same authority in the Admiralty as the Black and Red Books have in the Court of Exchequer, and most English writers on maritime law recognize its importance.

56. **MEMORIALS OF THE REIGN OF HENRY VI. :—OFFICIAL CORRESPONDENCE OF THOMAS BEKYNTON, SECRETARY TO HENRY VI., AND BISHOP OF BATH AND WELLS.** *Edited, from a MS. in the Archiepiscopal Library at Lambeth, with an Appendix of Illustrative Documents, by the* Rev. GEORGE WILLIAMS, B.D., Vicar of Ringwood, late Fellow of King's College, Cambridge. Vols. I. and II. 1872.

These curious volumes are of a miscellaneous character, and were probably compiled under the immediate direction of Bekynton before he had attained to the Episcopate. They contain many of the Bishop's own letters, and several written by him in the King's name; also letters to himself while Royal Secretary, and others addressed to the King. This work elucidates some points in the history of the nation during the first half of the fifteenth century.

57. **MATTHÆI PARISIENSIS, MONACHI SANCTI ALBANI, CHRONICA MAJORA.** Vol. I. The Creation to A.D. 1066. Vol. II. A.D. 1067 to A.D. 1216. Vol. III. A.D. 1216 to A.D. 1239. Vol. IV. A.D. 1240 to A.D. 1247. Vol. V. A.D. 1248 to A.D. 1259. *Edited by* HENRY RICHARDS LUARD, D.D., Fellow of Trinity College, Registry of the University, and Vicar of Great St. Mary's, Cambridge. 1872-1880.

This work contains the "Chronica Majora" of Matthew Paris, one of the most valuable and frequently consulted of the ancient English Chronicles. It is published from its commencement, for the first time. The editions by Archbishop Parker, and William Wats, severally begin at the Norman Conquest.

58. **MEMORIALE FRATRIS WALTERI DE COVENTRIA.—THE HISTORICAL COLLECTIONS OF WALTER OF COVENTRY.** Vols. I. and II. *Edited, from the MS. in the Library of Corpus Christi College, Cambridge, by* WILLIAM STUBBS, M.A., Regius Professor of Modern History, and Fellow of Oriel College, Oxford. 1872-1873.

This work, now printed in full for the first time, has long been a *desideratum* by Historical Scholars. The first portion, however, is not of much importance, being only a compilation from earlier writers. The part relating to the first quarter of the thirteenth century is the most valuable and interesting.

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* For some reason left unexplained, many parts were left unsurveyed; Northumberland, Cumberland, Westmoreland, and Durham, are not described in the survey; nor does Lancashire appear under its proper name; but Furness, and the northern part of Lancashire, as well as the south of Westmoreland, with a part of Cumberland, are included within the West Riding of Yorkshire. That part of Lancashire which lies between the Ribble and Mersey, and which at the time of the survey comprehended 688 manors, is joined to Cheshire. Part of Rutland is described in the counties of Northampton and Lincoln.

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